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February 3, 1994

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Briefings on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(TWO BRIEFINGS)

WHEN: February 17 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

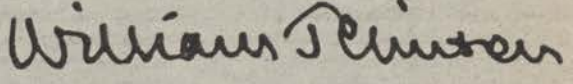
Memorandum of January 8, 1994

Notification Under 10 U.S.C. 2215 for the New Independent States (NIS) of the Former Soviet Union.

Memorandum for the Secretary of Defense

Pursuant to Section 2215, Title 10, United States Code, as amended by Section 1106 of the National Defense Authorization Act for Fiscal Year 1994, I hereby certify that making available the funds appropriated under the heading "Operation and Maintenance, Defense Agencies" in the Supplemental Appropriations for the NIS of the Former Soviet Union Act, 1993 (Title VI of Public Law 103–87) to the Agency for International Development, Assistance for the NIS of the Former Soviet Union, is in the national security interest of the United States.

You are authorized and directed to submit a copy of this certification to the appropriate committees of the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 8, 1994.

[FR Doc. 94–2588
Filed 2–1–94; 12:52 pm]
Billing code 3195–01–M

Editoral note: For an additional memorandum on assistance to the states of the former Soviet Union, see page 19 of volume 30 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[FV93-911-1IFR]

Expenses and Assessment Rates for Marketing Orders Covering Limes and Avocados Grown in Florida Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes assessment rates for the Florida Lime Administrative Committee and the Avocado Administrative Committee (Committees) under Marketing Orders 911 and 915 for the 1994–95 fiscal year. The Committees are responsible for local administration of the marketing orders which regulate the handling of Florida limes and avocados. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Effective beginning April 1, 1994, through March 31, 1995. Comments received by March 7, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883, telephone 813–299–4770; or Gary D. Rasmussen, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone 202–720–5331.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 911 [7 CFR part 911], as amended, regulating the handling of limes grown in Florida; and Marketing Agreement and Order No. 915 [7 CFR part 915] regulating the handling of avocados grown in Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866. This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes and avocados grown in Florida are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Florida limes and avocados handled during the 1994–95 fiscal year, beginning April 1, 1994, through March 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of limes grown in Florida, and approximately 40 producers in the regulated area who are subject to regulation under the lime marketing order. Also, there are approximately 65 handlers of avocados grown in Florida, and approximately 95 producers in the regulated area who are subject to regulation under the avocado marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of lime and avocado producers and handlers may be classified as small entities.

The lime and avocado marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable limes and avocados handled from the beginning of such year. Annual budgets of expenses are prepared by the Committees, the agencies responsible for local administration of their respective marketing orders, and submitted to the Department for approval. Each Committee consists of producers, handlers and a non-industry public member. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The Committees' budgets are

formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of limes and avocados (in bushels). Because those rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committees will have funds to pay their expenses.

The Florida Lime Administrative Committee met on December 8, 1993, and unanimously recommended 1994–95 marketing order expenditures of $89,697 and an assessment rate of $0.16 per 55-pound bushel of limes. In comparison, 1993–94 marketing year budgeted expenditures were $113,846, which is $24,149 more than the $89,697 recommended for this fiscal year. The assessment rate of $0.16 per bushel remains the same as last year's assessment rate of $0.16. The major budget categories for 1994–95 are $28,000 for administrative staff salaries and $10,100 for employee benefits.

Assessment income for 1994–95 is estimated to total $64,000 based on anticipated fresh domestic shipments of 400,000 55-pound bushels of limes. Interest on savings is expected to add an additional $2,000 to income. The assessment and interest income will have to be augmented by $23,697 from the Committee's reserves to provide adequate funds to cover budgeted expenses. Sufficient reserve funds are available to cover the projected deficit. Funds in the reserve at the end of the 1994–95 fiscal year are estimated to be $250,000. These reserve funds will be within the maximum permitted by the order of three fiscal years' expenses.

The Avocado Administrative Committee also met on December 8, 1993, and unanimously recommended 1994–95 marketing order expenditures of $97,000 and an assessment rate of $0.16 per 55-pound bushel of avocados. In comparison, 1993–94 marketing year budgeted expenditures were $113,846, which is $16,846 more than the $97,000 recommended for this fiscal year. The assessment rate of $0.16 per bushel remains the same as last year's assessment rate of $0.16. The major budget categories for 1994–95 are $28,000 for administrative staff salaries, $15,600 for compliance, and $10,100 for employee benefits.

Assessment income for 1994–95 is estimated to total $96,000 based on anticipated fresh domestic shipments of 600,000 55-pound bushels of avocados. Interest on savings is expected to add an additional $1,000 to income. Sufficient reserve funds are available to cover any unexpected shortfall in projected income. Funds in the reserve at the end of the 1994–95 fiscal year are estimated to be $100,000. These reserve funds will be within the maximum permitted by the order of three fiscal years' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committees' recommendations, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1994–95 fiscal year begins on April 1, 1994, and the marketing orders require that the rate of assessment for the fiscal year apply to all assessable limes and avocados handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committees at public meetings; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the Code of Federal Regulations.

PART 911—LIMES GROWN IN FLORIDA

2. A new § 911.232 is added to read as follows:

§ 911.232 Expenses and Assessment rate.

Expenses of $89,697 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.16 per bushel of assessable limes is established for the 1994–95 fiscal year ending on March 31, 1995. Unexpended funds may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

3. A new § 915.232 is added to read as follows:

§ 915.232 Expenses and Assessment rate.

Expenses of $97,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel of assessable avocados is established for the 1994–95 fiscal year ending on March 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: January 25, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–2418 Filed 2–2–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–209–AD; Amendment 39–8814; AD 94–03–07]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Carbon Brakes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is

applicable to certain Boeing Model 767 series airplanes. This action requires inspections of the brake rod inner cylinder bolts on the main landing gear (MLG) wheels and brakes; inspections of certain MLG bushings; installation of retainer plates at each MLG brake disconnect; inspection and modification of the brake rod pin assembly at each MLG wheel; repair or replacement of discrepant parts; and revision of the Airplane Flight Manual (AFM), as necessary. This amendment is prompted by numerous reports of brake failure during landing and during a low energy rejected takeoff. The actions specified in this AD are intended to prevent failure of two or more MLG brakes, which could adversely affect the stopping performance of the airplane.

DATES: Effective February 18, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 1994.

Comments for inclusion in the Rules Docket must be received on or before April 4, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports from Boeing that certain Model 767 series airplanes, equipped with carbon brakes, have experienced vibratory conditions, which resulted in damage or failure of the brake torque rod cross bolts and pins. Recently, one operator experienced a two-brake failure on a low energy rejected takeoff, whereas previously, there had been reports of two-brake failures occurring only during landings. To date, there have been 13 reported incidents of one-brake failure and 5 incidents of a two-brake failure, all due to the vibratory phenomenon. This type of failure could result in the loss of one or two brakes (out of eight total brakes), depending upon the location of the failure. The possibility exists that more than one brake-couple pair could experience simultaneous failure of the cross bolts or pins, which could result in the loss of more than two brakes.

Boeing has advised the FAA that heat damage resulting from high vibrational loads could lead to fracture of the brake rod inner cylinder bolts. If this should occur, the adjacent brake rods would disconnect from the inner cylinder, causing the brakes not to operate at two MLG wheels. As a result, secondary damage to the hydraulic lines and damage to wiring and the airframe could occur.

Boeing has also advised the FAA that vibrations during braking can lead to separation of the brake disconnect. Separation of brake hoses from the brakes would increase braking distances, which is of greatest concern if this should happen during a rejected takeoff.

Additionally, Boeing has advised the FAA that the development of a fracture in a cross bolt in the brake rod pin assembly could cause the brake not to operate at that MLG wheel. The brake rod could separate from the brake housing, permitting the brake housing to turn on the axle. Under such conditions, while the wheel turns and brake pressure is applied, rotation of the brake housing would cut the hydraulic line and electrical wires attached to the brake.

These conditions, if not corrected, could adversely affect the stopping performance of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 767–32A0116, Revision 1, dated January 13, 1994, that describes procedures for repetitive surface temper etch inspections and fluorescent magnetic particle inspections to detect cracks or thermal damage of the existing brake rod inner cylinder bolts on the MLG wheels and brakes, and replacement of cracked or damaged bolts with new or serviceable bolts. The service bulletin also describes procedures for performing repetitive visual inspections to detect cracking of the inner cylinder fork lug bushings, and the brake rod bushings at the inner cylinder fork lug end, and repair of cracked bushings. Accomplishment of the repetitive inspections, and replacement or repair as necessary, will help prevent the possibility of a fracture developing in the brake rod inner cylinder bolts. (The service bulletin limits the effectivity to Model 767 series airplanes equipped with carbon brakes.)

The FAA has also reviewed and approved Boeing Alert Service Bulletin 767–32A0125, dated November 11, 1993, that describes procedures for installation of retainer plates at each MLG brake disconnect. The alert service bulletin also describes procedures for adjustment of the torque of the "B"-nut on the hydraulic line connection to the disconnect fitting. Accomplishment of the installation of retainer plates at each MLG brake disconnect will provide an improved installation of the brake disconnect, which keeps the brake hose connected to the brake. (The alert service bulletin limits the effectivity to Model 767 series airplanes equipped with carbon brakes, line positions 132 through 518, inclusive.)

The FAA has also reviewed and approved Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 1994, that describes procedures for performing a visual inspection of the brake rod pin assembly at each MLG wheel to detect cracks, bronze transfer, corrosion, chrome discoloration, and areas of missing chrome plate; replacement of any damaged brake rod pin assembly; modification of the brake rod pin assembly; installation of the modified brake rod pin into the brake housing and brake rod; and installation of a new brake attach pin retainer configuration. The service bulletin also describes a visual inspection to detect cracking, deformation, and/or missing pieces of material in the brake housing, and the bushings in the end of the brake rod; and repair or replacement as necessary. Accomplishment of this inspection and modification of the brake rod pin assembly at each MLG wheel, inspection of certain MLG bushings, and replacement or repair as necessary, will help prevent the possibility of a fracture developing in a cross bolt. The manufacturer has installed this modification on airplanes (equipped with carbon brakes) in production, starting at line number 519 and subsequent. (The service bulletin limits the effectivity to Model 767 series airplanes equipped with carbon brakes, line positions 132 through 518, inclusive.)

Since an unsafe condition has been identified that is likely to exist or develop on other Model 767 series airplanes of the same type design, this AD is being issued to prevent failure of two or more MLG brakes, which could adversely affect the stopping performance of the airplane. This AD requires the following actions:

1. Repetitive surface temper etch inspections and fluorescent magnetic

particle inspections to detect cracks or thermal damage of the existing brake rod inner cylinder bolts on the MLG wheels and brakes, and replacement of cracked or damaged bolts with new or serviceable bolts;

2. Repetitive visual inspections to detect cracking of the inner cylinder fork lug bushings and the brake rod bushings at the inner cylinder fork lug end;

3. Installation of retainer plates at each MLG brake disconnect and adjustment of the torque of the "B"-nut on the hydraulic line connection to the disconnect fitting;

4. A one-time visual inspection of the brake rod pin assembly at each MLG wheel to detect cracks, bronze transfer, corrosion, chrome discoloration, and areas of missing chrome plate; replacement of any damaged brake rod pin assembly with a new or serviceable assembly; modification of the brake rod pin assembly; installation of the modified brake rod pin into the brake housing and brake rod; and installation of a new brake attach pin retainer configuration;

5. A one-time visual inspection to detect cracking, deformation, and/or missing pieces in the bushings in the brake housing, and the bushings in the end of the brake rod; and

6. Subsequent repair or replacement of any cracked and/or deformed bushings, and/or any bushings having missing pieces of material.

The actions are required to be accomplished in accordance with the service bulletins described previously.

This AD allows operation with one-brake-deactivated performance decrements for cracked or broken bushings, for operators who comply with the requirements of paragraphs (a) through (b)(3) of this AD within the acceptable compliance timeframe.

This AD allows operation with two-brake-deactivated performance decrements, for operators who have not accomplished the requirements of paragraphs (a) through (b)(3) of this AD within the acceptable compliance timeframe. For those operators, this AD requires revising the Limitations and Flight Performance Sections of the Airplane Flight Manual (AFM) to include two-brake-deactivated performance decrements. Three options are provided: the first and second options are simple, conservative corrections; the third option, while more complicated, can provide a less penalizing correction, depending upon the conditions. The effect of this AD is to ensure that flight crews are advised of the potential hazard and of the procedures to address it.

The applicability of this AD is limited to only Model 767 series airplanes equipped with carbon brakes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–209–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–03–07 Boeing: Amendment 39–8814. Docket 93–NM–209–AD.

Applicability: Model 767 series airplanes equipped with carbon brakes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of two or more MLG brakes, which could adversely affect the stopping performance of the airplane, accomplish the following:

(a) Except as provided in paragraph (f) of this AD, within 60 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Boeing Service Bulletin 767–32A0116, Revision 1, dated January 13, 1994:

(1) Perform a surface temper etch inspection and a fluorescent magnetic particle inspection to detect cracks or thermal damage of the brake rod inner cylinder bolts on the main landing gear (MLG) wheels and brakes in accordance with the service bulletin. As a result of these

inspections, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable:

(i) If cracking or thermal damage is found on any bolt: Prior to further flight, replace the existing bolt with a new or serviceable bolt in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 800 flight cycles.

(ii) If cracking or thermal damage is not found on any bolt: Apply finish and reinstall the bolt in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 800 flight cycles.

(2) Perform a visual inspection to detect cracking of the inner cylinder fork lug bushings and the brake rod bushings at the inner cylinder fork lug end in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 800 flight cycles.

(b) For airplanes having line positions 132 through 518, inclusive: Except as provided in paragraph (f) of this AD, within 60 days after the effective date of this AD, accomplish paragraphs (b)(1), (b)(2), and (b)(3), as follows:

(1) Install the retainer plates at each MLG brake disconnect; and adjust the torque of the "B"-nut on the hydraulic line connection to the disconnect fitting; in accordance with Boeing Alert Service Bulletin 767–32A0125, dated November 11, 1993.

(2) Remove the cross bolt from the brake housing and brake rod pin assembly at each MLG wheel; remove the brake rod pin assembly; perform a visual inspection of the brake rod pin assembly to detect cracks, bronze transfer, corrosion, chrome discoloration, and areas of missing chrome plate; prior to further flight, replace any damaged brake rod pin assembly with a new or serviceable assembly; modify the brake rod pin assembly; install the modified brake rod pin into the brake housing and brake rod; and install a new brake attach pin retainer configuration; in accordance with Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 1994.

(3) Perform a one-time visual inspection to detect cracking, deformation, and/or a missing piece in the bushings in the brake housing, and the bushings in the end of the brake rod, in accordance with Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 1994.

(c) For any bushing that is found broken and/or any bushing that is found having a piece missing during the inspection(s) required by paragraphs (a)(2) and/or (b)(3) of this AD, accomplish the requirements of either paragraph (c)(1) or (c)(2), as follows:

(1) Within 10 flight cycles after detection, repair or replace the bushing in accordance with the appropriate service bulletin. No performance decrements are required within the first 10 flight cycles since detection. Or

(2) If the affected bushing has not been replaced within 10 flight cycles after detection, observe one-brake-deactivated performance decrements in accordance with the FAA-approved Airplane Flight Manual (AFM) until replacement of the affected bushing is accomplished. Operation must be performed with all brakes and the antiskid system fully functional, while operating with one-brake-deactivated performance decrements for broken bushings and/or a bushing with a missing piece.

(d) For any bushing that is found to be cracked or deformed during the inspection(s) required by paragraphs (a)(2) and/or (b)(3) of this AD, accomplish the requirements of either paragraph (d)(1) or (d)(2), as follows:

(1) Within 100 flight cycles since detection, repair or replace the bushing in accordance with the appropriate service bulletin. No performance decrements are required within the first 100 flight cycles since detection. Or

(2) If the affected bushing(s) has not been replaced within 100 flight cycles since detection, observe one-brake-deactivated performance decrements in accordance with the FAA-approved AFM until replacement of the affected bushing is accomplished. Operation must be performed with all brakes and the antiskid system fully functional, while operating with one-brake-deactivated performance decrements for cracked bushings.

(e) Operators may operate beyond 60 days after the effective date of this AD with one-brake-deactivated performance decrements for cracked or broken bushings, provided that the actions required by paragraphs (a) through (b)(3) of this AD have been accomplished.

(f) Revise the Limitations and Flight Performance sections of the FAA-approved AFM (or computer generated takeoff weight tables) to include the following information. (This may be accomplished by inserting a copy of this AD in the AFM.) If the actions required by paragraphs (a) through (b)(3) of this AD have not been accomplished within 60 days after the effective date of this AD, the following two-brake-deactivated performance decrements must be observed until the actions required by paragraphs (a) through (b)(3) of this AD have been accomplished. The following adjustments reflect takeoff and landing performance, assuming failure of two brakes. Operation must be performed with all brakes operative and the anti-skid system operative.

"Option 1

(1) Subtract 70,000 LB (31,750 KG) from the takeoff limited weight (the most limiting (lowest) of maximum certified, obstacle clearance, tire speed, brake energy, climb, or field length limited weight). No adjustment to the takeoff speeds for the resulting weight is required.

(2) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.20.

(3) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value.

Option 2

(1) Field Length Limited Weight—Section 4.4 of the Airplane Flight Manual: Reduce the 'all brakes operative' field length limited weight by 10,500 LB (4,750 KG). The maximum allowable takeoff weight is the most limiting (lowest) of maximum certified, climb, obstacle clearance, tire speed, or this adjusted field length limited weight.

(2) Reference $V_{1(mcg)}$ Limited Accelerate-Stop Distance—Section 4.8 of the Airplane Flight Manual: Increase the reference $V_{1(mcg)}$ limited accelerate-stop distance by 1000 FT.

(3) Takeoff Decision Speed, V_1—Section 4.7 of the Airplane Flight Manual: Reduce V_1 by the following:

Weights below 330,000 LB (150,000 KG):
Subtract 4 knots
Weights at or above 330,000 LB (150,000 KG):
Subtract 3 knots

If the resulting V_1 is less than $V_{1(mcg)}$, takeoff is permitted with V_1 set equal to $V_{1(mcg)}$ provided the corrected accelerate-stop distance available exceeds the adjusted reference $V_{1(mcg)}$ limited accelerate-stop distance from Step 2.

(4) Brake Energy Limits—Section 4.7 of the Airplane Flight Manual: Reduce the maximum brake energy speed allowed with all brakes operative by 30 knots. Verify the scheduled V_1 is less than the reduced V_{MBE}. If not, then takeoff weight must be reduced.

(5) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.20.

(6) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value.

Option 3

Once the following adjustments to corrected accelerate-stop distance and V_{MBE} are determined, the takeoff weights should be calculated in the normal fashion (using these adjusted data) to determine the maximum allowable takeoff weight.

(1) Corrected Accelerate Stop Distance—Section 4.3 of the Airplane Flight Manual: Use the following table to adjust the corrected accelerate-stop distance.

Corrected accel-stop distance (feet)	Adjusted corrected accel-stop distance (feet)	Adjusted corrected accel-stop distance (feet)	Corrected accel-stop distance (feet)
4,000	3,420	13,000	11,552
5,000	4,312	14,000	12,470
6,000	5,206	15,000	13,391
7,000	6,104	16,000	14,315
8,000	7,005	17,000	15,241
9,000	7,908	18,000	16,171
10,000	8,815	19,000	17,104
11,000	9,724	20,000	18,039
12,000	10,637	.....	.....

Linearly interpolate for accelerate-stop distance values between those shown.

(2) Reference $V_{1(mcg)}$ Limited Accelerate-Stop Distance—Section 4.8 of the Airplane Flight Manual: Increase the reference $V_{1(mcg)}$ limited accelerate-stop distance by 500 FT.

If V_1 is less than $V_{1(mcg)}$, takeoff is permitted with V_1 set equal to $V_{1(mcg)}$ provided the corrected accelerate-stop distance available exceeds this adjusted reference $V_{1(mcg)}$ limited accelerate-stop distance.

(3) Brake Energy Limits—Section 4.7 of the Airplane Flight Manual: Use the following table to adjust the maximum brake energy speed allowed with all brakes operative after correcting for runway slope and wind.

All brake op V_{MBE} KIAS	Adjusted V_{MBE} KIAS	All brake op V_{MBE} KIAS	Adjusted V_{MBE} KIAS
100	84.2	170	141.4
110	92.4	180	149.6
120	100.6	190	157.8
130	108.7	200	166.0
140	116.9	210	174.2
150	125.1	220	182.3
160	133.3	.....	.....

Linearly interpolate for V_{MBE} values between those shown.

(4) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.20.

(5) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value."

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with Boeing Service Bulletin 767–32A0116, Revision 1, dated January 13, 1994; Boeing Alert Service Bulletin 767–32A0125, dated November 11, 1993; and Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on Febriary 18, 1994.

Issued in Renton, Washington, on January 27, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2336 Filed 2–2–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–04–AD; Amendment 39–8809; AD 94–03–03]

Airworthiness Directives; Lockheed Model 382, 382B, 382E, 382F, and 382G Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Lockheed Model 382, 382B, 382E, 382F, and 382G series airplanes. This action requires inspections to detect loose, missing, or deformed fasteners in the upper truss mounts of certain engines, inspections to detect cracking in the associated tangs, and replacement of damaged parts with new or serviceable parts. This amendment is prompted by a report of fatigue cracking of the upper tang of the truss mounts. The actions specified in this AD are intended to prevent multiple failures of the upper truss mounts due to the problems associated with fatigue cracking, which could adversely affect the integrity of the engine mount structure.

DATES: Effective February 18, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 1994.

Comments for inclusion in the Rules Docket must be received on or before April 4, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Western Export Company (LWEC), Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063–0755. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: Recently, the operator of Lockheed Model C–130 (military) series airplanes reported that, during routine maintenance inspections, the truss mounts on the upper tangs on the outboard engines of several airplanes were found to be cracked. These airplanes had accumulated between 9,000 and 14,000 total hours time-in-service. Since these military airplanes are typically subjected to more rigorous flight operations (such as low level penetration, air drop, and soft landings during training missions) than their civilian aircraft counterparts, the fatigue life of the components on these military airplanes are affected more adversely. These findings of cracking, which have been attributed to fatigue, were found in the upper attach fittings between the engine truss mounts and the front wing spars. This cracking occurred in the tangs that penetrate the front wing spars and progressed to the point of overload failure.

Similar cracking was also found on a civilian Model 382G series airplane that had accumulated approximately 23,000 total hours time-in-service.

Complete fracture of a single upper truss mount would not adversely affect the fail-safe structure of the airplane; however, the effect on the fatigue life of the remaining upper truss mount is unknown at this time. Additional failures of the upper truss mount, if not corrected, could adversely affect the integrity of the engine mount structure.

The engine mountings on the military Model C–130 and the civilian Model 382G series airplanes are identical in design to the mountings on civilian Model 382, 382B, 382E, and 382F series airplanes on which the outer wings have been replaced in accordance with Manufacturing End Product (MEP) 12R/13R or MEP 9T/10T. Although cracking has not been found on these specific civilian airplanes, the FAA has determined that those airplanes could be subject to the same type of fatigue cracking in the subject engine mounts that was found in the military airplanes and in the civilian Model 382G series airplane.

Additionally, although cracking has been detected only on the engine mounts of the number one engine, the FAA has determined that fatigue could similarly stress the engine mountings of both outboard (number one and number four) engines, and that consequent fatigue cracking is likely to occur on the mountings of both engines.

The FAA has reviewed and approved Lockheed Alert Service Bulletin A382–

71–19–A82–687, dated December 23, 1993, that describes procedures for inspections to detect loose, missing, or deformed fasteners, and cracking of the upper tangs of the truss mounts on the outboard engines.

Since an unsafe condition has been identified that is likely to exist or develop on other Lockheed Model 382, 382B, 382E, 382F, and 382G series airplanes of the same type design, this AD is being issued to prevent multiple failures of the upper truss mounts, which could adversely affect the integrity of the engine mount structure. This AD requires repetitive general visual inspections to detect loose, missing, or deformed fasteners on the inboard and outboard upper truss mounts of the number one and number four (left and right outboard) engines, and repetitive general visual inspections to detect cracking in the upper tangs of the truss mounts of these engines. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This AD also requires replacement of loose, missing, or deformed fasteners with new or serviceable fasteners, and replacement of cracked truss mount upper tangs with new or serviceable tangs.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–04–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–03–03 Lockheed: Amendment 39–8809. Docket 94–NM–04–AD.

Applicability: Model 382, 382B, 382E, and 382F series airplanes having serial numbers 3946 through 4512, inclusive, on which the outer wings have been replaced in accordance with Manufacturing End Product (MEP) 12R/13R or MEP 9T/10T; and Model 382G series airplanes having serial numbers 4561 through 5225, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent multiple failures of the upper truss mounts, which could adversely affect the integrity of the engine mount structure, accomplish the following:

(a) Prior to the accumulation of 15,000 total hours time-in-service since wing replacement (for Model 382, 382B, 382E, and 382F series airplanes on which the outer wings have been replaced in accordance with MEP 12R/13R or MEP 9T/10T); or prior to the accumulation of 15,000 total hours time-in-service (for Model 382G series ariplanes); or within 30 days after the effective date of this AD; whichever occurs later: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD. Repeat the specified inspections thereafter at intervals not to exceed 300 hours time-in-service or 100 landings, whichever occurs later.

(1) Perform a general visual inspection to detect loose, missing, or deformed fasteners on the inboard and outboard upper truss mounts of the number one and number four (left and right outboard) engines, in accordance with Lockheed Alert Service Bulletin A382–71–19/A82–687, dated December 23, 1993. If any loose, missing, or deformed fastener is found, prior to further flight, replace it with a new or serviceable fastener in accordance with Hercules Structural Repair Manual, Document Number SMP 583.

(2) Perform a general visual inspection to detect cracking of the truss mount upper tangs of the number one and number four engines in accordance with Lockheed Alert Service Bulletin A382–71–19/A82–687, dated December 23, 1993. If cracking is detected in any truss mount upper tang, prior to further flight, replace it with a new or serviceable tang in accordance with Hercules Structural Repair Manual, Document Number SMP 583, or in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with Lockheed Alert Service Bulletin A382–71–19/A82–687, dated December 23, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company (LWEC), Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063–0755. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 18, 1994.

Issued in Renton, Washington, on January 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–1691 Filed 2–2–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 91–ANM–16]

Alteration of Jet Routes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the description of Jet Route J–54, located in vicinity of Idaho and Oregon, published in the **Federal Register** on September 10, 1993. That final rule removed Boise, ID, from the description of J–54 to improve existing air traffic control (ATC) route continuity on frequently used high altitude routes. However, during recent flight checks of J–54, it was determined that Boise, ID, should be reinstated and the jet route segment from Cherokee, WY, to Laramie, WY, should be removed due to lack of frequency protection in the extended service volume. This action reflects the restoration of Boise, ID, and the removal of the jet route segment from Cherokee, WY, to Laramie, WY, in the description of J–54.

EFFECTIVE DATE: 0701 UTC, March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 10, 1993, the Federal Aviation Administration (FAA) published a final rule that alters several jet routes located in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, Wyoming, and Oregon to coincide with the scheduled opening date of the new Denver International Airport (58 FR 47633). However, during recent flight checks of jet route J–54, it was determined that Boise, ID, should be reinstated and the jet route segment from Cherokee, WY, to Laramie, WY, should be removed due to lack of frequency protection in the extended service volume. This action reflects the reinstatement of Boise, ID, and the removal of the segment from Cherokee, WY, to Laramie, WY, in the description of J–54, which becomes effective on March 9, 1994.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on September 10, 1993 (58 FR 47633), and the description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 47634, in the second column, the description for J–54 is corrected to read as follows:

J–54 [Corrected]

From Tatoosh, WA, via Olympia, WA; Baker, OR; Boise, ID; to Pocatello, ID.

Issued in Washington, DC, on January 27, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–2398 Filed 2–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 27593; Amdt. No. 381]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice

and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on January 26, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 UTC, April 1, 1993:

PART 95—[AMENDED]

1. Authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 381 Effective Date, March 3, 1994]

From	To	MEA
§95.6019 VOR Federal Airway 19—Is Amended to Read in Part		
Billings, MT VORTAC *9700-MRA	*Shela, MT FIX	
	SE BND	6100
	NW BND	7700
§95.6068 VOR Federal Airway 68—Is Amended to Read in Part		
Corona, NM VORTAC	Honds, NM FIX	9500
Honds, NM FIX	Chisum, NM VORTAC	
	NW BND	9500
	SE BND	6500
§95.6083 VOR Federal Airway 83—Is Amended to Read in Part		
Chisum, NM VORTAC	Honds, NM FIX	
	NW BND	9500
	SE BND	6500
§95.6120 VOR Federal Airway 120—Is Amended to Read in Part		
Dupree, SD VORTAC *3700-MOCA	Pierre, SD VORTAC	*4300
§95.6178 VOR Federal Airway 178—Is Amended to Read in Part		
Maudd, KY FIX *5000-MRA	*McFee, KY FIX	5000
McFee, KY FIX	Lexington, KY VORTAC	5000
§95.6220 VOR Federal Airway 220—Is Amended to Read in Part		
Watertown, SD VORTAC *3900-MOCA	Fargo, ND VORTAC	*5000
§95.6252 VOR Federal Airway 252—Is Amended to Read in Part		
DuPont, DE VORTAC	Robbinsville, NJ VORTAC	2000
§95.6265 VOR Federal Airway 265—Is Amended to Read in Part		
Krant, MD FIX	Westminster, MD VOR/DME	2600
§95.6291 VOR Federal Airway 291—Is Amended to Read in Part		
Chisum, NM VORTAC	Dupal, NM FIX	
	NW BND	9500
	SE BND	6000
§95.6339 VOR Federal Airway 339—Is Amended to Read in Part		
Hazard, KY VOR/DME *5000-MRA	*Trent, KY FIX	4000
Trent, KY FIX *5000-MRA	*Masse, KY FIX	3000
Masse, KY FIX *5000-MRA	*Sprow, KY FIX	3000
Sprow, KY FIX	Falmouth, KY VOR/DME	3000
§95.6517 VOR Federal Airway 517—Is Amended to Read in Part		
London, KY VORTAC *5000-MRA	*Logic, KY FIX	3300
Logic, KY FIX *5000-MRA	*Codel, KY FIX	2800
Codel, KY FIX *5000-MRA	*Nouns, KY FIX	2800
Nouns, KY FIX	Falmouth, KY VOR/DME	2800

From	To	MEA	MAA
§95.7201 Jet Route No. 201	**Is Deleted**		
Myton, UT VORTAC	Sirly, WY FIX	29000	45000

From	To	MEA	MAA
Sirly, WY FIX	Scottsbluff, NE VORTAC #18000	45000	45000

#COP Measured From OCS VORTAC.

[FR Doc. 94-2396 Filed 2-2-94; 8:45 am]
BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Final Rule and Rule Amendments Concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule, which was published Tuesday, July 13, 1993, (58 FR 37644). The rule implemented the statutory directives of sections 5a, 8c, and 17 of the Commodity Exchange Act as amended by section 206 of the Futures Trading Practices Act of 1992 and established various requirements with respect to the composition of self-regulatory organization governing boards and major disciplinary committees.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction amended chapter I of title 17 of the Code of Federal Regulations by adding § 1.64, Composition of various self-regulatory organization governing boards and major disciplinary committees, on the effective date.

Need for Correction

As published, the final rule contains a typographical error which is in need of clarification.

Correction of Publication

Accordingly, the publication on July 13, 1993 of the final rule, which was the subject of FR Doc. 93-16525, is corrected as follows:

§ 1.64 [Corrected]

On page 37654, in the second column, in § 1.64, paragraph (b) introductory text, line six, the section designation "5(a)(12)(A)" is corrected to read "5a(a)(12)(A)".

Issued in Washington, DC, on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94-2140 Filed 2-2-94; 8:45 am]
BILLING CODE 6351-01-M

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule, which was published Wednesday, August 18, 1993, (58 FR 43791) concerning commodity pool operators.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction amended Regulation § 4.5 on the effective date by excluding certain otherwise regulated persons from the definition of the term "commodity pool operator."

Need for Correction

As published, the authority citation for the final rule contains a typographical error which is in need of clarification.

Correction of Publication

Accordingly, the publication on August 18, 1993 of the final rule, which was the subject of FR Doc. 93-19812, is corrected as follows:

PART 4—[CORRECTED]

On page 43793, in the first column, item 1 is corrected to read:

The authority citation for part 4 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

Issued in Washington, DC, on January 25, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94-2142 Filed 2-2-94; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 102, and 134

[T.D. 94-4]

RIN 1515-AB34

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Corrections

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the interim regulations (T.D. 94-4), which were published Monday, January 3, 1994 (59 FR 110). That document established the interim rules for determining the country of origin of certain goods for purposes of Annex 311 of the North American Free-Trade Agreement, as implemented under the North American Free-Trade Agreement Implementation Act (Act) (Pub. L. 103-182, 107 Stat. 437 (December 8, 1993)).

EFFECTIVE DATES: These corrections are effective January 1, 1994. Comments must be received on or before April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202-482-6980).

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision (T.D.) 94-4, published in the **Federal Register** (59 FR 110) on January 3, 1994, contains the interim regulations that represent fulfillment of the obligations of the United States under Paragraph 1 of Annex 311 of the North American Free-Trade Agreement (NAFTA), as implemented under the North American

Free-Trade Agreement Implementation Act (Act) (Pub. L. 103–182, 107 Stat. 437 (December 8, 1993)).

This document corrects some errors published in T.D. 94–4, which did not represent a proper transcription from the final version of edited drafts of the rules. Accordingly, some changes are made to remedy these transcription errors. (An example of a transcription error was the inadvertent omission of many tariff shift rules in § 102.20(f)). Other changes, also, are necessary to correct typographical errors, which if left uncorrected can have the effect of changing the meaning of a specific provision. None of these corrections, however, represent a change of position by Customs with respect to any of the rules published in T.D. 94–4.

Corrections of Publication

Accordingly, the publication on January 3, 1994 of the interim regulations (T.D. 94–4) (59 FR 110) is corrected as set forth below.

Corrections to the Background Section

1. On page 110, in the second column under the heading *Section 102.1 Definitions*, the paragraph is corrected to read:

Section 102.1, "Definitions", sets forth the definitions of terms that will be used in part 102. It is of note that some of the defined terms, such as "wholly obtained or produced" in paragraph (g) will be used only in § 102.11, "General Rules", while other terms, such as the definition for "simple assembly," in paragraph (o) will be used in several sections in this part, including in many of the specific rules in § 102.20. Of special note is the definition of "material", another term that is used throughout this part. Under paragraph (l), the term, "material" is defined as including "parts", "ingredients", "subassemblies", and "components", terms which are used in various contexts throughout this part.

2. On page 111, in the second column, under the heading *Section 102.13 De Minimis*, in line 16, the reference "§ 102.18" is corrected to read "§ 102.20".

3. On page 112, in the first column, under the heading *Section 102.18 Rules of Interpretation*, in the second paragraph, in line 9, the words "or failing to be classified as complete finished by virtue of this rule" in the parenthetical text are corrected to read "or is classified as complete or finished by virtue of this rule".

Corrections to the Interim Regulations

4. On page 113, in the second column, in § 102.1, paragraph (a) is corrected to read:

(a) *Advanced in Value.* "Advanced in value" means an increase in the value of a good as a result of production with respect to that good, other than by means of those "minor processing" operations described in paragraphs (m)(5), (m)(6), and (m)(7) of this section.

5. On page 113, in the third column, in § 102.1, paragraph (i) is corrected to read:

(i) *Improved in Condition.* "Improved in condition" means the enhancement of the physical condition of a good as a result of production with respect to that good, other than by means of those "minor processing" operations described in paragraphs (m)(5), (m)(6), and (m)(7) of this section.

6. On page 114:

a. In the second column, in § 102.11, paragraph (c), in line 2, the reference "paragraph (b)(1) or (2)" is corrected to read "paragraph (a) or (b)"; and

b. In the third column, in § 102.11, paragraph (d), in line 3, the reference "paragraph (b)(1) through (3)" is corrected to read "paragraphs (a) through (c)".

7. On page 115, in the first column, § 102.14 is corrected to read:

§ 102.14 Goods returned.

No good, last advanced in value or improved in condition outside the United States has United States origin. If under any other provision of this part such a good is determined to be a good of the United States, that determination will be disregarded and the country of origin of the good will be the last foreign country in which the good was advanced in value or improved in condition.

8. In § 102.20:

a. On page 134, the entry for 8448.19 is removed in its entirety;

b. On page 134, the table entry for 8469.10–8469.39 is removed in its entirety, and added, in its place, is the following:

HTSUS	Tariff shift and/or other requirements
. . . . .	
(p)	**Section XVI: Chapters 84 through 85**
. . . . .	
8469.10	A change to subheading 8469.10 from any other subheading.
8469.21–8469.39	A change to subheading 8469.21 through 8469.39 from any subheading outside that group.
. . . . .	

c. On page 139, the second table entry for 9507.10–9507.30 is removed in its entirety; the table entry for 9504.10–9506.99 is removed in its entirety, and added, in its place, is the following:

HTSUS	Tariff shift and/or other requirements
. . . . .	
(t)	**Section XX: Chapters 94 through 96**
. . . . .	
9504.10–9506.29	A change to subheading 9504.10 through 9506.29 from any other subheading, including within that group.
9506.31	A change to subheading 9506.31 from any other subheading, except from subheading 9506.39.
9506.39–9506.99	A change to subheading 9506.39 through 9506.99 from any other subheading, including within that group.

HTSUS	Tariff shift and/or other requirements
• • • • • • •	

d. Beginning on page 116 and on appropriate pages thereafter, the following table entries are corrected to read as follows:

HTSUS	Tariff shift and/or other requirements
(a)	**Section I: Chapters 1 through 5**
• • • • • • •	
0305.30	A change to subheading 0305.30 from any other subheading, except from fillets of heading 0304.
0305.41–0305.69	A change to subheading 0305.41 through 0305.69 from any other chapter.
• • • • • • •	
0403.90	A change to subheading 0403.90 from any other chapter; or A change to sour cream, or kephir from any other product of Chapter 4.
• • • • • • •	
(d)	**Section IV: Chapters 16 through 24**
• • • • • • •	
2008.19–2008.99	A change to subheading 2008.19 through 2008.99 from any other chapter, provided that change is not the result of mere blanching of nuts.
• • • • • • •	
2202.90	A change to subheading 2202.90 from any other subheading, except from Chapter 4 or heading 1901, 2009, or 2106; or A change to subheading 2202.90 from Chapter 4 or heading 1901, provided that the good contains no more than 50 percent of milk solids by weight; or A change to subheading 2202.90 from heading 2009 or subheading 2106.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country constitute in single strength form no more than 60 percent by volume of the good.
• • • • • • •	
(h)	**Section VIII: Chapters 41 through 42**
4101–4103	A change to heading 4101 through 4103 from any other chapter.
• • • • • • •	
(k)	**Section XI: Chapters 50 through 63**
Notes	• • • (e) • • • (3) For the purposes of § 102.11(b) of the General Rules, except for sets, where a good classifiable in Chapter 61 through 63 does not meet the tariff shift and/or other requirements of the heading or subheading under which it is classifiable, the country of origin of that good shall be the single country where the component which determines the classification of that good was cut or formed (e.g., knit to shape).
• • • • • • •	
5407–5408	A change to heading 5407 through 5408 from any heading outside that group; or A change from greige fabric of heading 5407 through 5408 to finished fabric of those same headings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
• • • • • • •	
6211.31–6211.49	A change to assembled fully lined, fully padded, or fully insulated garments consisting of five or more major parts, of subheading 6211.31 through 6211.49, from either subheading 6217.90 or 6117.90, provided that no major part has been knit to shape; or A change to assembled fully lined, fully padded, or fully insulated garments consisting of five or more major parts, from unassembled parts classified in subheading 6211.31 through 6211.49 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
• • • • • • •	
(p)	**Section XVI: Chapters 84 through 85**

HTSUS	Tariff shift and/or other requirements
•	•
8415.10–8415.83	A change to subheading 8415.10 through 8415.83 from any subheading, including another subheading within that group, except a change within that group resulting from a simple assembly.
•	•
8419.90	A change to subheading 8419.90 from any other heading, except headings 7303, 7304, 7305, or 7306, unless the change from these headings involves bending to shape, and except a change from heading 8501, when resulting from a simple assembly.
•	•
8422.90	A change to subheading 8422.90 from any other heading, except heading 8501, when resulting from a simple assembly.
•	•
8448.11–8448.19	A change to subheading 8448.11 through 8448.19 from any other subheading, including another subheading within that group.
•	•
8448.20–8448.59	A change to subheading 8448.20 through 8448.59 from any other heading, except heading 8501, when resulting from a simple assembly.
•	•
8473	A change to heading 8473 from any other heading, except heading 8501, when resulting from a simple assembly.
•	•
8482.91–8482.99	A change to subheading 8482.91 through 8482.99 from any other heading.
•	•
8544.11–8544.70	A change to subheading 8544.11 through 8544.70 from any other subheading, including another subheading within that group, except when resulting from a simple assembly.
•	•
(r)	**Section XVIII: Chapters 90 through 92**
•	•
9001.10	A change to subheading 9001.10 from any other subheading, except from subheading 8544.70.
•	•
9001.40–9001.90	A change to subheading 9001.40 through 9001.90 from any other subheading, including another subheading within that group, except from lens blanks of heading 7014 or subheading 7015.10.
9002.11–9002.90	A change to subheading 9002.11 through 9002.90 from any other subheading, including another subheading within that group, except from subheading 9001.90 or lens blanks of heading 7014.
•	•
9005.90	A change to subheading 9005.90 from any other heading, except from heading 9001 or 9002.
•	•
9013.90	A change to subheading 9013.90 from any other subheading, except from subheading 9002.19, when resulting from a simple assembly.
•	•
9018.11–9018.19	A change to subheading 9018.11 through 9018.19 from any other subheading, including another subheading within that group, except to electro-cardiographs, or patient monitoring systems from printed circuit assemblies when resulting from a simple assembly.
•	•
9018.90	A change to subheading 9018.90 from any other subheading, except from either subheading 9001.90 or synthetic rubber of heading 4002, when resulting from a simple assembly; or A change to defibrillators from printed circuit assemblies, except when resulting from a simple assembly.
•	•
9021.19	A change to subheading 9021.19 from any other subheading, except from either nails of heading 7317 or screws of heading 7318, when resulting from a simple assembly.
•	•
9032.90	A change to subheading 9032.90 from any other subheading, except from heading 8537, when resulting from a simple assembly.
•	•
(s)	**Section XIX: Chapter 93**

HTSUS	Tariff shift and/or other requirements
9301–9304	A change to heading 9301 through 9304 from any other heading, including a heading within that group, except a change from heading 9305 when that change is pursuant to GRI 2(a).

e. Beginning on page 122 and on appropriate pages thereafter, the following table entries are added to the end of paragraph (f) to read as follows:

HTSUS	Tariff shift and/or other requirements
(f)	**Section VI: Chapters 28 through 38**
3102.29	A change to subheading 3102.29 from any other subheading, except from subheading 3102.21 or 3102.30.
3102.30	A change to subheading 3102.30 from any other subheading.
3102.40	A change to subheading 3102.40 from any other subheading, except from subheading 3102.30.
3102.50	A change to subheading 3102.50 from any other subheading.
3102.60	A change to subheading 3102.60 from any other subheading, except from subheading 2834.29 or 3102.30.
3102.70	A change to subheading 3102.70 from any other subheading.
3102.80	A change to subheading 3102.80 from any other subheading, except from subheading 3102.10 or 3102.30.
3102.90	A change to subheading 3102.90 from any other subheading, except from subheading 3102.10 through 3102.80.
3103.10–3103.20	A change to subheading 3103.10 through 3103.20 from any other subheading, including any subheading within the group.
3103.90	A change to subheading 3103.90 from any other subheading, except from subheading 3103.10 or 3103.20.
3104.10–3104.30	A change to subheading 3104.10 through 3104.30 from any other subheading, including any subheading within the group.
3104.90	A change to subheading 3104.90 from any other subheading, except from subheading 3104.10 through 3104.30.
3105.10	A change to subheading 3105.10 from any other chapter.
3105.20	A change to subheading 3105.20 from any other heading, except from heading 3102 through 3104.
3105.30–3105.40	A change to subheading 3105.30 through 3105.40 from any other subheading, including any subheading within the group.
3105.51–3105.59	A change to subheading 3105.51 through 3105.59 from any other subheading, including any subheading within the group, except from subheading 3102.10 through 3103.90, or 3105.30 through 3105.40.
3105.60	A change to subheading 3105.60 from any other subheading, except from heading 3103 through 3104.
3105.90	A change to subheading 3105.90 from any other chapter, except from subheading 2834.21.
3201.10–3202.90	A change to subheading 3201.10 through 3202.90 from any other subheading, including any subheading within the group.
3203	A change to heading 3203 from any other heading.
3204.11–3204.17	A change to subheading 3204.11 through 3204.17 from any other subheading, including any subheading within the group.
3204.19	A change to subheading 3204.19 from any other subheading, except from subheading 3204.11 through 3204.17.
3204.20–3204.90	A change to subheading 3204.20 through 3204.90 from any other subheading, including any subheading within the group.
3205	A change to heading 3205 from any other heading.
3206.10–3209.90	A change to subheading 3206.10 through 3209.90 from any other subheading, including any subheading within the group.
3210	A change to heading 3210 from any other heading.
3211	A change to heading 3211 from any other heading, except from subheading 3806.20.
3212.10–3212.90	A change to subheading 3212.10 through 3212.90 from any other subheading, including any subheading within the group.
3213	A change to heading 3213 from any other heading.
3214.10–3214.90	A change to subheading 3214.10 through 3214.90 from any other subheading, including any subheading within the group, except from subheading 3823.50.
3215	A change to heading 3215 from any other heading.
3301.11–3301.90	A change to subheading 3301.11 through 3301.90 from any other subheading, including any subheading within the group.
3302	A change to heading 3302 from any other heading, except from heading 2207, 2208, or 3301
3303	A change to heading 3303 from any other heading, except from subheading 3302.90.
3304.10–3307.90	A change to subheading 3304.10 through 3307.90 from any other subheading, including any subheading within the group.
3401	A change to heading 3401 from any other heading.
3402.11–3402.20	A change to subheading 3402.11 through 3402.20 from any other subheading, including any subheading within the group.
3402.90	A change to subheading 3402.90 from any other heading.
3403.11–3403.19	A change to subheading 3403.11 through 3403.19 from any other subheading, including any subheading within the group, except from heading 2710 or 2712.
3403.91–3403.99	A change to subheading 3403.91 through 3403.99 from any other subheading, including any subheading within the group.
3404.10–3404.20	A change to subheading 3404.10 through 3404.20 from any other subheading, including any subheading within the group.
3404.90	A change to subheading 3404.90 from any other subheading, except from heading 1521 or subheading 2712.20 or 2712.90.
3405.10–3405.90	A change to subheading 3405.10 through 3405.90 from any other subheading, including any subheading within the group.
3406–3407	A change to heading 3406 through 3407 from any other heading, including any heading within the group.
3501.10–3501.90	A change to subheading 3501.10 through 3501.90 from any other subheading, including any subheading within the group.
3502.10	A change to subheading 3502.10 from any other subheading, except from heading 0407.
3502.90	A change to subheading 3502.90 from any other subheading.
3503–3504	A change to heading 3503 through 3504 from any other heading, including any heading within the group.
3505.10	A change to subheading 3505.10 from any other subheading.
3505.20	A change to subheading 3505.20 from any other subheading, except from heading 1108.
3506.10	A change to subheading 3506.10 from any other subheading, except from heading 3503 or subheading 3501.90.
3506.91–3506.99	A change to subheading 3506.91 through 3506.99 from any other subheading, including any subheading within the group.
3507	A change to heading 3507 from any other heading.
3601–3606	A change to heading 3601 through 3606 from any other heading, including any heading within the group.

HTSUS	Tariff shift and/or other requirements
3701–3703	A change to heading 3701 through 3703 from any other heading outside the group.
3704–3706	A change to heading 3704 through 3706 from any other heading, including any heading within the group.
3707.10–3707.90	A change to subheading 3707.10 through 3707.90 from any other subheading, including any subheading within the group.
3801.10	A change to subheading 3801.10 from any other subheading.
3801.20	A change to subheading 3801.20 from any other subheading, except from heading 2504 or subheading 3801.10.
3801.30	A change to subheading 3801.30 from any other subheading.
3801.90	A change to subheading 3801.90 from any other subheading, except from heading 2504.
3802–3805	A change to heading 3802 through 3805 from any other heading, including any heading within the group.
3806.10–3806.90	A change to subheading 3806.10 through 3806.90 from any other subheading, including any subheading within the group.
3807	A change to heading 3807 from any other heading.
3808.10	A change to subheading 3808.10 from any other subheading, except from subheading 1302.14, 2916.19 or 2917.19.
3808.20–3808.90	A change to subheading 3808.20 through 3808.90 from any other subheading, including any subheading within the group.
3809.10	A change to subheading 3809.10 from any other subheading, except from subheading 3505.10.
3809.91–3809.99	A change to subheading 3809.91 through 3809.99 from any other subheading, including any subheading within the group.
3810–3816	A change to heading 3810 through 3816 from any other heading, including any heading within the group.
3817.10–3817.20	A change to subheading 3817.10 through 3817.20 from any other subheading, including any subheading within the group, except from subheading 2902.90.
3818	A change to heading 3818 from any other heading.
3819	A change to heading 3819 from any other heading, except from heading 2710.
3820	A change to heading 3820 from any other heading, except from subheading 2905.31.
3821	A change to heading 3821 from any other heading.
3822	A change to heading 3822 from any other heading, except from subheading 3002.10, 3502.90 or heading 3504.
3823.10	A change to subheading 3823.10 from any other subheading, except from heading 3505 or subheading 3806.10 or 3806.20, or heading 3903, 3905, 3906, 3909, 3911, or 3913.
3823.20	A change to subheading 3823.20 from any other subheading.
3823.30	A change to subheading 3823.30 from any other subheading, except from heading 2849.
3823.40	A change to subheading 3823.40 from any other subheading.
3823.50	A change to subheading 3823.50 from any other subheading, except from subheading 3214.90.
3823.60	A change to subheading 3823.60 from any other subheading.
3823.90	A change to subheading 3823.90 from any other subheading, provided that no more than 60 percent by weight of the goods classified hereunder is attributable to one substance or compound.

Dated: January 27, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94–2435 Filed 2–2–94; 8:45 am]

BILLING CODE 4820–02–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 206 and 207

Implementing Rules for the North American Free Trade Agreement

AGENCY: United States International Trade Commission.

ACTION: Interim rules with request for comments.

SUMMARY: The Commission is amending its rules of practice and procedure to conform with the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993) ("NAFTA Implementation Act"). In particular, these interim regulations implement title III of the NAFTA Implementation Act, which provides for special safeguard investigations and determinations with respect to Canadian and Mexican articles during the transition period for tariff elimination under the North American Free Trade Agreement ("NAFTA"), provide for certain findings with respect to Canadian and Mexican articles in the course of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2252), make certain conforming changes to section 202 of the Trade Act of 1974 with respect to treatment of confidential business information, and direct the Commission to "adopt such procedures and rules and regulations as are necessary to bring its procedures into conformity with chapter 8 of the Agreement." These interim regulations also implement title IV of the NAFTA Implementation Act, which provides for issuance of administrative protective orders for information required to be released in review by a binational panel of United States antidumping and countervailing duty final determinations involving products from Canada or Mexico.

DATES: These amended interim rules take effect as of January 1, 1994, the date on which the NAFTA became effective. Written comments must be received not later than April 4, 1994.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter addressed to Donna R. Koehnke, Secretary, should be sent to the U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Concerning part 206: William Gearhart (202–205–3091); Concerning subpart G of part 207: Kathryn A. Gilchrist (202–205–3092) or Andrea C. Casson (202–205–3105), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

A. Part 206

Chapter 8 of the NAFTA sets out the procedures and remedies available to domestic industries that have sustained, or are threatened by, serious economic injury due to increased imports. Chapter 8 covers two different situations—actions that can be taken against increased imports from a single NAFTA country due to injury caused by the phase-out of tariffs under the NAFTA ("bilateral" actions) and those that can be taken against imports from all sources ("global" actions). In general, such bilateral actions may be taken during specified "transition periods"

during which duties on NAFTA-origin goods are being phased out. When taking global actions, NAFTA countries are called upon to exclude goods originating in other NAFTA countries from the action when they are not a significant cause of the problem. However, NAFTA imports initially excluded may be subsequently included if a surge in such imports is found to undermine the effectiveness of the relief action. In several respects, the chapter tracks the emergency action provisions in Chapter 11 of the United States-Canada Free Trade Agreement ("CFTA") for both bilateral and global actions, while adding Mexico to, and making certain changes in, the CFTA rules.

Chapter 8 of the NAFTA goes beyond Chapter 11 of the CFTA in several respects. The chapter establishes procedural rules similar to those in current U.S. law and practice that each government will be required to follow in conducting investigations leading to bilateral and global safeguard actions against goods from other NAFTA countries. These rules require, among other things, the publication of notice of an investigation and its scope, the holding of a public hearing, protection of confidential information, and publication of findings and the basis for those findings.

Title III of the NAFTA Implementation Act (1) provides for special safeguard investigations and determinations by the Commission with respect to Canadian and Mexican articles during the transition period of the Agreement; (2) provides for Commission findings in the context of a global action safeguard investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) to assist the President in determining whether imports from Canada or Mexico should be excluded from the relief action; and (3), if imports from Canada and/or Mexico are excluded from the action, provides for Commission investigations and findings with respect to whether there has been a surge in such excluded imports which undermines the effectiveness of the relief action. Title III also makes certain conforming changes to section 202 of the Trade Act of 1974 (19 U.S.C. 2252) with respect to treatment of confidential business information. Section 317 of the NAFTA Implementation Act directs the Commission to "adopt such procedures and rules and regulations as are necessary to bring its procedures into conformity with chapter 8 of the Agreement."

Since August 29, 1988, the Commission has had in effect interim rules governing the Commission's administrative responsibilities under sections 201–204 and 406 of the Trade Act of 1974, as amended (19 U.S.C. 2251–2254, 2436). See 53 FR 33036, Aug. 29, 1988. The amendments to these rules provide procedures for Commission investigations and determinations with respect to imports from Canada or Mexico during the transition period of the Agreement; for Commission findings in the context of a global action safeguard investigation under sections 201–202 of the Trade Act of 1974 to assist the President in determining whether imports from Canada or Mexico should be excluded from the relief action; and, if imports from Canada and/or Mexico are excluded from the action, for Commission investigations and findings with respect to whether there has been a surge in such excluded imports which undermines the effectiveness of the relief action. The amendments also set out Commission procedures regarding the protection of confidential business information, and make certain technical changes to bring the rules into conformity with chapter 8 of NAFTA. No changes except with respect to numbering were made to rules specifically relating to the Commission's administrative responsibilities under sections 204 and 406 of the Trade Act. These amended interim rules are intended to replace the existing rules as of January 1, 1994.

B. Subpart G of Part 207

Chapter 19 of the NAFTA establishes a mechanism for resolving disputes between any two of the NAFTA countries with respect to antidumping and countervailing duty cases. The central feature of the mechanism is the replacement of domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from another NAFTA country with review by binational panels. The NAFTA countries will continue to apply their own national antidumping and countervailing duty laws to goods imported from the other country. In such cases, binational panels, consisting of five panelists chosen by the countries involved in the dispute, will expeditiously review final determinations under these laws to decide whether they are consistent with the antidumping or countervailing duty law of the country that made the determination.

The NAFTA also provides for review of a panel decision by an extraordinary challenge committee ("Committee") when the government of one of the NAFTA countries alleges that a panelist materially violated the rules of conduct, or that the panel seriously departed from a fundamental procedural rule or exceeded its powers, authority or jurisdiction. The NAFTA requires that the NAFTA countries protect sensitive business information against unlawful disclosure in both the panel review and extraordinary challenge processes.

Title IV of the NAFTA Implementation Act amends U.S. law to implement chapter 19 of the NAFTA by limiting judicial review in cases involving Canadian or Mexican merchandise, establishing procedures whereby private parties may appeal for binational panel review, providing organizational structure for administering U.S. responsibilities under chapter 19 and making other conforming amendments to U.S. law. More specifically, section 402(g) of the NAFTA Implementation Act authorizes the Commission to issue regulations to implement chapter 19 of the NAFTA, including extraordinary challenge committee proceedings.

These regulations are intended to implement certain administrative procedures required by chapter 19 of the Agreement involving administrative responsibilities of the Commission that continue during and after panel review. The regulations address release of business proprietary and privileged information under administrative protective order during a panel review, and sanctions for violations of the provisions of such protective orders.

Since January 1, 1989, the Commission has had in effect either interim or final rules governing the Commission's administrative responsibilities under the U.S.-Canada Free-Trade Implementation Act of 1988, Pub. L. 100–449 (September 28, 1988) ("CFTA Implementation Act"). See 53 FR 53248, Dec. 30, 1988 (interim); 54 FR 36295, Sept. 1, 1989 (interim); and 57 FR 34825, Aug. 6, 1992 (final). The amended interim rules issued herein, which govern the Commission's administrative responsibilities under the NAFTA Implementation Act, for the most part track the existing rules applicable under the CFTA Implementation Act. Unless otherwise noted, these rules are technical in nature, for example, replacing references to Canada with references to the NAFTA country or references to the CFTA Agreement with references to the NAFTA agreement. These amended interim rules are intended to replace the existing rules as of January 1, 1994.

C. Implementation of Interim Rules Under Part 206 and Subpart G of Part 207

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rule making provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), ("APA"), which entails the following steps: (1) Publication of a notice of proposed rule making; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. See 5 U.S.C. 553. That procedure could not be utilized in this instance because the new legislation was enacted on December 8, 1993, and became effective on January 1, 1994. Thus, it was not possible to complete the standard procedure prior to that date. The Commission thus determined to adopt interim rules that go into effect as of January 1, 1994 and will remain in effect until the Commission can adopt final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.

In addition to the requirement in the NAFTA Implementation Act that Commission rules be amended by the effective date of the legislation, the Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from two sources: (1) Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and (2) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rule making procedures under certain circumstances. The Commission has determined that the statutory requirement to have rules in place by the effective date of the NAFTA constitutes appropriate circumstances to forego the steps listed in section 553 of the APA. Specifically, the Commission has determined that the requirement that amended rules take effect as of January 1, 1994 makes the notice, comment and advance publication procedure impracticable in this instance and that the amended interim rules constitute agency rules of procedure and practice for which notice of proposed rule making is not required. Further, the Commission has determined that the requirement that amended rules be in place by the enactment date of the legislation constitutes good cause to publish interim rules without providing thirty days notice prior to their effective date.

The Commission has also determined that these rules do not constitute major rules for the purposes of Executive Order 12291 (46 FR 13193, Feb. 17, 1981), because they do not meet the criteria described in section 1(b) of the EO. Finally, the amendments, as interim rules, are not subject to the filing requirement of section 3(c)(3) of the EO.

The Regulatory Flexibility Act does not apply to these rules because they do not affect a large number of small entities, and because the rules were not required by section 553 of the Administrative Procedure Act or by any other law to be promulgated as a proposed rule before issuance as a final rule.

Explanation of Proposed Amendments

Amendments to Part 206

The title of part 206 is changed to refer to, among other things, "global and bilateral safeguard actions," reflecting the use of the term "safeguards" in the NAFTA Implementation Act and to distinguish between actions with respect to imports from all countries (proceedings under section 201 of the Trade Act of 1974) and actions with respect to imports from a NAFTA country (proceedings under section 302(b) of the NAFTA Implementation Act). The current title of this part refers to, among other things, "investigations relating to import injury to industries." The current title, which historically has been used to refer to section 201-type proceedings, can be confusing to those not familiar with Commission trade law terminology and has been misconstrued as describing proceedings under other statutory provisions that the Commission administers.

Section 206.1 is amended to state that part 206 applies to functions and duties of the Commission under sections 301–318 of the NAFTA Implementation Act and to state that subparts C and D of the rules apply to requests/petitions and investigations under sections 312(c) and 302 of that Act, respectively. Former subparts C and D (relating to market disruption investigations under section 406 of the Trade Act of 1974 (19 U.S.C. 2436) and monitoring and advice under section 204 of the Trade Act of 1974 (19 U.S.C. 2254), respectively) are redesignated as subparts E and F.

Section 206.2, which provides for the identification of petitions, is amended to include references to sections 312(c) and 302 of the NAFTA Implementation Act in the list of statutory provisions under which petitions under this part may be filed.

Section 206.3 is divided into three subsections and amended to describe the information that the Commission is to include in a notice when it institutes an investigation, and to state that the Commission will promptly make the petition or request available for public inspection (with the exception of confidential business information). This latter amendment conforms the Commission rules to paragraphs 4 and 5 of NAFTA Annex 803.3.

Section 206.4 is amended to state that the Commission will also transmit copies of requests (relating to a surge in imports from a NAFTA country) to the USTR and certain other agencies.

Section 206.5, concerning public hearings, is divided into three subsections and amended to distinguish between investigations under subpart B, in which the Commission is required to hold separate hearings on injury and remedy, and investigations under subparts C, D, and E, in which the Commission holds only one hearing on both issues, to the extent appropriate. Additional language states that interested parties and consumers, including any association representing the interests of consumer, may appear and may cross-question interested parties making presentations at a hearing; this latter amendment conforms the rule to section 7(b) of NAFTA Annex 803.3.

Section 206.6, concerning the Commission's report to the President, simplifies the existing description and also states that the Commission will include, in the case of a report containing a determination under section 302(b) of the NAFTA Implementation Act, certain findings with respect to factors other than imports that may be a cause of serious injury or threat thereof.

Section 206.7, states that the Commission, in the case of an investigation under subparts B, C, or D of this part, will not release information considered to be confidential business information unless the party submitting the information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. This rule reflects an amendment made by section 317(b) of the NAFTA Implementation Act to section 202(a) of the Trade Act. Paragraph 8 of NAFTA Annex 803.3 requires that the investigating authority in a NAFTA country adopt or maintain procedures for the treatment of confidential information.

Subpart B, which relates to investigations filed under section 201 of the Trade Act, is retitled "Investigations Relating to Global Safeguard Actions", reflecting in part the change in the title of part 206.

In § 206.12, the definition of perishable agricultural product is simplified to take into account the fact that certain monitoring is required by statute (section 316 of the NAFTA Implementation Act). Also, reference is made to citrus products to reflect the amendment made by section 315 of the NAFTA Implementation Act to section 202(d) of the Trade Act.

Section 206.14, concerning the contents of petitions, is amended in several minor respects. The introductory paragraph is amended at the end to provide that the petition is to include certain information "to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available". This amendment conforms § 206.14 with paragraph 3 of NAFTA Annex 803.3. A new paragraph (3) is added to subsection (e) to state that the petition is to contain data relating to changes in the level of prices, production, and productivity, also conforming § 206.14 with paragraph 3(e) of NAFTA Annex 803.3 regarding the contents of petitions. Also, a new subsection (i) is added to state that petitions are to include data indicating the share of imports accounted for by imports from each NAFTA country, and petitioner's view concerning the extent to which such imports are contributing importantly to the serious injury or threat thereof. This conforms § 206.14 with paragraph 3(g) of NAFTA Annex 803.3. Finally, a new subsection (j) is added to set out the dates by which any allegations of critical circumstances must be included within the petition.

Subpart C is new, and the title states that it pertains to investigations relating to a surge in imports from a NAFTA country.

Section 206.21 states that subpart C applies to investigations under section 312(c) of the NAFTA Implementation Act, which provides for Commission investigations and determinations when there has been a surge in imports of an article from Canada or Mexico that has been excluded from a U.S. global safeguard action with respect to such article.

Section 206.22 defines the term "surge" to mean a significant increase in imports over the trend for a recent representative base period. This definition tracks the definition in section 312(c)(3) of the NAFTA Implementation Act and Article 805 of the NAFTA.

Section 206.23 states that a request for an investigation under this Subpart may be filed by any entity that is representative of the industry for which the global action is being taken.

Section 206.24 describes the information that a request for an investigation is to contain, including the identity of the requestor, the article and its tariff provision, the name of the country or countries from which the surge is coming, information with respect to representativeness, and data and information supporting the allegation that a surge in imports has occurred and that such surge undermines the effectiveness of the relief action.

Section 206.25 states that the Commission will submit its findings to the President no later than 30 days after receiving the request for an investigation, as required by section 312(c)(2) of the NAFTA Implementation Act.

Section 206.26 states that the Commission will make its report to the President available to the public (with the exception of confidential business information) and cause a summary thereof to be published in the **Federal Register**.

Subpart D is new, and the title states that it pertains to investigations relating to bilateral safeguard actions.

Section 206.31 states that subpart D applies to investigations under section 302(b) of the NAFTA Implementation Act.

Section 206.32 defines the terms "critical circumstances" and "perishable agricultural product" in the same manner as in § 206.12 of the rules.

Section 206.33 states who may file a petition. Subsection (a) states that a request for an investigation under this Subpart may be filed by any entity that is representative of a domestic industry producing an article like or directly competitive with a Canadian or Mexican article that is allegedly, as a result of the reduction or elimination of a duty provided for under the NAFTA, being imported in such increased quantities and under such conditions so that imports of the article alone constitute a substantial cause of serious injury or threat thereof to such industry. Subsection (b) states who may file a petition with respect to imports from Canada or Mexico of a perishable agricultural product. Subsection (c) makes reference to the fact that the President is authorized to take a bilateral action with respect to an article from Canada or Mexico during the appropriate period provided for in section 305(a) of the NAFTA Implementation Act, or thereafter but only if the Government of Canada or Mexico, as the case may be, consents to such provision (see section 305(b) of the NAFTA Implementation Act). The periods set out in section 305(a) are the transition periods for tariff elimination in the U.S. schedules in the CFTA and NAFTA.

Section 206.34 describes the information that is to be included in a petition for an investigation. This section generally tracks § 206.14 of these rules concerning contents of petitions, except that the introductory paragraph tracks the wording of the standard applicable in a bilateral safeguard investigation involving a NAFTA country, the import data section requires data concerning Canadian or Mexican imports as appropriate, and the statement called for in § 206.14(i) concerning imports from NAFTA countries is not included.

Section 206.35 implements the time requirements for Commission determinations and reports in section 303(a) and (c) of the NAFTA Implementation Act, and states that the Commission will make its injury determination within 120 days of the initiation of an investigation, and submit its report to the President no later than 30 days thereafter. Time requirements for determinations in investigations involving imports of perishable agricultural products or allegations of critical circumstances are also specified.

Section 206.36 states that the Commission will make its report to the President available to the public (with the exception of confidential business information) and cause a summary thereof to be published in the **Federal Register**.

Subparts E and F, relating to investigations for relief from market disruption, and monitoring and advice as to effect of extension, reduction, modification, or termination of relief, respectively, are unchanged from previous subparts C and D. However, the various rule sections have been renumbered to reflect the revised order in part 206.

Amendments to Subpart G to Part 207

Section 207.90 currently indicates that subpart G implements Article 1904 of the CFTA Implementation Act. The amendment to this section expands the scope of subpart G to cover procedures and regulations for implementation of Article 1904 of the NAFTA.

Section 207.91 provides definitions of terms used in subpart G. The definitions of "Agreement", "Article 1904 Rules" and "FTA" have been amended to reflect the change from the CFTA to the NAFTA. The amended definitions also reflect that, in the event that the United States or Canada withdraws from the

NAFTA, the CFTA would still apply to the United States and Canada, and that these rules would apply to binational panel reviews between those two countries.

A definition has been added for "ECC Rules", and references to these rules have been added to the definition of "counsel" and to the general provision incorporating definitions set forth in the Article 1904 and ECC Rules. Definitions have been added for "Free Trade Area Country," "Mexican Secretary," and "Relevant FTA Secretary," reflecting the provisions of the NAFTA and the implementing legislation. Specific cross-references to 1904 Panel and ECC Rules have been deleted from the definition of "Notice of Appearance" to avoid confusion that may result from subsequent renumbering of the 1904 Panel and ECC Rules. Finally, the definition of the term "Persons" has been changed to "Person" for reasons of clarity.

Section 207.93 covers the protection of proprietary information during panel and committee proceedings. Subsections (b)(4), (b)(6), (c)(2)(ii)(E), (c)(3), and (c)(4)(v) have been amended to include references to the Mexican Government, government officials or Secretary where appropriate. Subsection (c)(4)(B) has been amended to reference the ECC Rules as well as the Article 1904 Rules. Specific cross-references have been deleted, however, to avoid confusion that might result from subsequent renumbering of these rules. Subsections (c)(4), (c)(5), (f)(1) and (f)(2) have been amended to change the number of copies of documents filed with the Commission Secretary from six (or seven in the case of subsection (c)(5)(ii)(B)) to three. Subsection (d) has been corrected to indicate that only panel members in reviews conducted under the CFTA should send a countersigned copy of their administrative protective orders to the United States Secretary to notify the Secretary that he or she may transmit documents containing proprietary information. Annex 1901.2(7)(a) of the NAFTA requires that panelists sign an application for a protective order, but unlike Annex 1901.2(7)(a) of the CFTA, does not require panelists to sign a copy of the protective order itself. Subsection (d)(2)(ii) has been amended to make explicit that the Secretary may deny an application for a protective order by informing the applicant of the reasons for such denial within fourteen days of the Secretary's receipt of an application therefor. Subsection (f)(5) has also been revised to indicate that the Commission Secretary is required to provide the United States Secretary with a copy of any amendment, modification, or revocation of a protective order issued during panel proceedings.

Section 207.94 addresses the protection of privileged information during Panel and Committee proceedings. The text has been corrected to specifically reference Committees as well as Panels. The term "Secretary" has been modified to "Commission Secretary" for clarity purposes.

Section 207.100 covers sanctions for prohibited acts under these regulations. The Tariff Act, as amended by section 403(c) of the CFTA Implementation Act, authorized the Commission to impose sanctions against any person who is found by the Commission to have violated, or induced violation of, the terms of a protective order issued by the Commission for CFTA purposes. 19 U.S.C. 1677f(f)(4). Section 412(b)(8) of the NAFTA Implementation Act amends this provision to exclude from its coverage judges sitting on courts created under article III of the United States Constitution who are appointed to NAFTA binational panels or committees.

The rules contained in §§ 207.100–207.120 address the Commission's procedures for imposing sanctions under the statutory provision added by the CFTA Implementation Act. The same procedures will apply with respect to the imposition of sanctions for violations of the terms of protective orders issued by the Commission for NAFTA purposes. Subsection 207.100(a) has been amended, however, to reflect the statutory exclusion of federal judges from the persons who may be subject to sanctions under the Commission's regulations.

Subsection 207.102(b) addresses Commission determinations on recommendations made by the Office of Unfair Import Investigations on the initiation of sanction proceedings. A reference to "OUII" in this subsection has been changed to the "Office of Unfair Import Investigations" because "OUII" is not a defined term in these rules.

Subsection 207.102(d) currently addresses, among other matters, the situations in which it may be appropriate to request the authorized agency of Canada to initiate proceedings under Canadian law on the basis of an alleged violation of the protective order. By changing the references to "Canada" to "another Free Trade Agreement country," this provision now will provide for the referral of an investigation to Mexico or to Canada, as may be appropriate in the circumstances. Section 207.120, which provides for public notice of sanctions has been amended to provide for notice to appropriate Mexican, as well as United States and Canadian, agencies.

List of Subjects in 19 CFR Parts 206 and 207

Administrative practice and procedure, Antidumping, Canada, Mexico, Countervailing duty, Imports, Trade agreements.

For the reasons set forth in the preamble, 19 CFR Parts 206 and 207, subpart G are revised to read as set forth below.

Interim amended rules

By order of the Commission.

Donna R. Koehnke

Secretary

Issued: January 26, 1994.

1. Part 206 is revised to read as follows:

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, AND REVIEW OF RELIEF ACTIONS

Sec.

Authority: Secs. 201–202 of the Trade Act of 1974 (19 U.S.C. 2251–2252); Secs. 302–317 of the North American Free Trade Agreement Implementation Act (107 Stat. 2057, Pub. L. 103–182, Dec. 8, 1993).

§ 206.1 Applicability of part.

This part 206 applies specifically to functions and duties of the Commission under sections 201–202, 204, and 406 of the Trade Act of 1974, as amended (19 U.S.C. 2251, 2252, 2254, 2436) (hereinafter Trade Act), and sections 301–318 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3351 *et seq.*) (hereinafter NAFTA Implementation Act). Subpart A of this part sets forth rules generally applicable to investigations conducted under these provisions; for other rules of general application, see part 201 of this chapter. Subpart B of this part sets forth rules specifically applicable to petitions and investigations under section 202 of the Trade Act; subpart C sets forth rules specifically applicable to requests and investigations under section 312(c) of the NAFTA Implementation Act; subpart D sets forth rules specifically applicable to petitions and investigations under section 302 of the NAFTA Implementation Act; and subpart E sets forth rules specifically applicable to petitions and investigations under section 406 of the Trade Act. Subpart F of this part sets forth rules applicable to functions and duties under section 204 of the Trade Act.

Subpart A—General

§ 206.2 Identification of type of petition or request.

Each petition or request, as the case may be, under this part 206 shall state clearly on the first page thereof "This is a [petition or request] under section [202 or 406 of the Trade Act of 1974, or section 302 or 312(c) of the North American Free Trade Agreement Implementation Act] and subpart [B, C, D, and/or E] of part 206 of the rules of practice and procedure of the United States International Trade Commission".

§ 206.3 Institution of investigations; publication of notice; availability of petition for public inspection.

(a) Promptly after the receipt of a petition or request under this part 206, properly filed, the Commission will institute an appropriate investigation and will cause a notice thereof to be published in the **Federal Register**.

(b) The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information.

(c) The Commission will promptly make such petition or request available for public inspection (with the exception of confidential business information).

§ 206.4 Notification of other agencies.

The Commission will promptly transmit copies of petitions or requests filed and notification of investigations instituted to the Office of the United States Trade Representative (hereinafter USTR), the Secretary of Commerce, the Secretary of Labor, and other Federal agencies directly concerned.

§ 206.5 Public hearings.

(a) *Investigations under subpart B.* A public hearing on the question of injury and a second public hearing on remedy (if necessary) will be held in connection with each investigation instituted under subpart B of this part after reasonable notice thereof has been caused to be published in the **Federal Register**. A hearing on remedy will not be held if the Commission has made a negative determination on the question of injury.

(b) *Investigations under subparts C, D, and E.* A public hearing on the subject of injury and remedy will be held in connection with each investigation instituted under subparts C, D, and E of this part after reasonable notice thereof has been caused to be published in the **Federal Register**.

(c) *Opportunity to appear and to cross-question.* All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted in the case of an investigation under section 202(b), and to be heard at such hearings. All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to cross-question interested parties making presentations at the hearing.

§ 206.6 Report to the President.

The Commission will include in its report to the President the following:

(a) The determination made and an explanation of the basis for the determination;

(b) If the determination is affirmative, the recommendations for action and an explanation of the basis for each recommendation;

(c) Any dissenting or separate views by members of the Commission regarding the determination and any recommendations;

(d) In the case of a determination made under section 202(b) of the Trade Act:

(1) The findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry;

(2) A copy of the adjustment plan, if any, submitted by the petitioner;

(3) Commitments submitted and information obtained by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition;

(4) A description of the short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, other domestic industries, and consumers; and

(5) A description of the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and communities where production facilities of such industry are located, and other domestic industries.

(e) In the case of a determination made under section 302(b) of the NAFTA Implementation Act, the findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry.

§ 206.7 Confidential business information.

In the case of an investigation under subpart B, C, or D of this part, the

Commission will not release information which the Commission considers to be confidential business information within the meaning of § 201.6 of these rules of practice and procedure unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information.

Subpart B—Investigations Relating to Global Safeguard Actions

§ 206.11 Applicability of subpart.

This subpart B applies specifically to investigations under section 202(b) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.12 Definitions applicable to subpart B.

For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) *Adjustment plan* means a plan to facilitate positive adjustment to import competition submitted by a petitioner to the Commission and USTR either with the petition or at any time within 120 days after the date of filing of the petition.

(b) *Commitment* means commitments that a firm in the domestic industry, a certified or recognized union or group of workers in the domestic industry, a local community, a trade association representing the domestic industry, or any other person or group of persons submits to the Commission regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition;

(c) *Critical circumstances* mean such circumstances as are described in section 202(b)(3)(B) of the Trade Act;

(d) *Perishable agricultural product* means any agricultural article or citrus product, including livestock, which is the subject of monitoring pursuant to section 202(d) of the Trade Act.

§ 206.13 Who may file a petition.

(a) *In general.* A petition under this subpart B may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article like or directly competitive with a foreign article that is allegedly being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(b) *Reinvestigation within 1 year.* Except for good cause determined by the Commission to exist, no investigation for the purposes of section 202 of the Trade Act shall be made with respect to the same subject matter as a previous investigation under this section unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(c) *Perishable agricultural product.* An entity of the type described in paragraph (a) of this section that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to such product only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

§ 206.14 Contents of petition.

A petition under this subpart B shall include specific information in support of the claim that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because the imported article is a *perishable agricultural product.* In addition, such petition shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced; (2) the percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and (3) the names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that the article concerned is being imported in increased quantities, either actual or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating

the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Imports from NAFTA countries.* Quantitative data indicating the share of imports accounted for by imports from each NAFTA country (Canada and Mexico), and petitioner's view on the extent to which imports from such NAFTA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

(j) *Critical circumstances.* An allegation that critical circumstances exist must be included in the petition or made on or before the 90th day after the date on which the petition is filed if the Commission is to make a determination with regard to such allegation on or before the 120th day after the day on which the petition is filed; or included in the petition after the 90th day and on or before the 150th day after such filing if the Commission is to make a determination with regard to such allegation on or before the date the Commission's report is submitted to the President.

§ 206.15 Industry adjustment plan and commitments.

(a) *Adjustment plan.* A petitioner may submit to the Commission, either with the petition or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(b) *Commitments.* If the Commission makes an affirmative injury determination, any firm in the domestic industry, certified or recognized union or group of workers in the domestic industry, local community, trade association representing the domestic industry, or any other person or group of persons may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.16 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be, except that if the Commission determines before the 100th day that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days. The Commission will make its report to the President at the earliest practicable time, but not later than 180 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition or on or before the 90th day after the day on which the petition was filed, the Commission will report its determination regarding such allegation and any finding on or before the 120th day after such filing date. In the event petitioner alleges such circumstances after the 90th day and on or before the 150th day after such filing date, the Commission will report its determination regarding such allegation and any finding on or before the date its report is submitted to the President.

§ 206.17 Public report.

Upon making a report to the President of the results of an investigation to which the subpart B relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register**.

Subpart C—Investigations Relating to a Surge in Imports From a NAFTA Country

§ 206.21 Applicability of subpart.

This subpart C applies specifically to investigations under section 312(c) of the NAFTA Implementation Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.22 Definition applicable to subpart C.

For the purposes of this subpart, the term *surge* means a significant increase in imports over the trend for a recent representative base period.

§ 206.23 Who may file a request.

If the President, under section 312(b) of the NAFTA Implementation Act, has excluded imports from a NAFTA country or countries from an action under chapter 1 of title II of the Trade Act of 1974, any entity that is representative of an industry for which such action is being taken may request the Commission to conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action.

§ 206.24 Contents of request.

The request for an investigation shall include the following information:

(a) The identity of the entity submitting the request; a description of the relief action the effectiveness of which is allegedly being undermined; and a description of the imported article, identifying the United States tariff provision under which it is classified, and the name of the country or countries from which the surge in imports is alleged to be coming;

(b) The information required in § 206.14(b) of this subpart concerning representativeness of the entity filing the request;

(c) Data concerning imports from the NAFTA country or countries that form the basis of requestor's claim that a surge in imports has occurred;

(d) Information supporting the claim that such surge in imports undermines the effectiveness of the relief action.

§ 206.25 Time for reporting.

The Commission will submit the findings of its investigation to the President no later than 30 days after the request is received.

§ 206.26 Public report.

Upon making a report to the President of the results of an investigation to which this subpart C relates, the Commission will make such report public (with the exception of any confidential business information) and cause a summary thereof to be published in the **Federal Register**.

Subpart D—Investigations Relating to Bilateral Safeguard Actions

§ 206.31 Applicability of subpart.

This subpart D applies specifically to investigations under section 302(b) of the NAFTA Implementation Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.32 Definitions applicable to subpart D.

For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) *Critical circumstances* mean such circumstances as are described in section 202(b)(3)(B) of the Trade Act;

(b) *Perishable agricultural product* means any agricultural article or citrus

product, including livestock, which is the subject of monitoring pursuant to section 202(d) of the Trade Act.

§ 206.33 Who may file a petition.

(a) *In general.* A petition under this subpart D may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article that is like or directly competitive with a Canadian or Mexican article that is allegedly, as a result of the reduction or elimination of a duty provided for under the North American Free Trade Agreement, being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article alone constitute a substantial cause of serious injury, or (except in the case of a Canadian article) a threat of serious injury, to such domestic industry.

(b) *Perishable agricultural product.* An entity of the type described in paragraph (a) of this section that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to imports of such product from Canada or Mexico only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

(c) The President is authorized to provide import relief with respect to an article from Canada or Mexico during the period provided for in section 305(a) of the NAFTA Implementation Act; the President may provide relief after the expiration of this period, but only if the Government of Canada or Mexico, as the case may be, consents to such provision (see section 305(b) of the NAFTA Implementation Act).

§ 206.34 Contents of petition.

A petition under this subpart D shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty provided for under the North American Free Trade Agreement, a Canadian or Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury, or (except in the case of a Canadian article) a threat of serious injury, to the domestic industry producing an article that is like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because the imported article is a *perishable agricultural product.* In addition, such petition shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced; (2) the percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and (3) the names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years that form the basis of the claim that the Canadian or Mexican article concerned is being imported in increased quantities in absolute terms;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports of the Canadian or Mexican article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Critical circumstances.* An allegation that critical circumstances exist must be included in the petition or made on or before the 90th day after the date on which the investigation is initiated.

§ 206.35 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the investigation is initiated. The Commission will make its report to the President no later than 30 days after the date on which its determination is made.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days

after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition or on or before the 90th day after the day on which the investigation is initiated, the Commission will report its determination regarding such allegation and any finding on or before the 120th day after such initiation date.

§ 206.36 Public report.

Upon making a report to the President of the results of an investigation to which this subpart D relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register**.

Subpart E—Investigations for Relief From Market Disruption

§ 206.41 Applicability of subpart.

This subpart E applies specifically to investigations under section 406(a) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.42 Who may file a petition.

A petition under this subpart E may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article with respect to which there are imports of a like or directly competitive article which is the product of a Communist country, which imports, allegedly, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of a material injury, or the threat thereof, to such domestic industry.

§ 206.43 Contents of petition.

A petition under this subpart E shall include specific information in support of the claim that imports of an article that are the product of a Communist country which are like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry. In addition, such petition shall, to the extent practicable, include the following information:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced; (2) the percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and (3) the names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that imports from a Communist country of an article like or directly competitive with the article produced by the domestic industry concerned are increasing rapidly, either absolutely or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to material injury, data indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets;

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (e) of this section; information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles; evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns; and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought.

§ 206.44 Time for reporting.

The Commission will make its report to the President at the earliest practical time, but not later than 3 months after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

§ 206.45 Public report.

Upon making a report to the President of the results of an investigation to which this subpart E relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register**.

Subpart F—Monitoring; Advice as to Effect of Extension, Reduction, Modification, or Termination of Relief Action

§ 206.51 Applicability of subpart.

This subpart F applies specifically to investigations under section 204 of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.52 Monitoring.

(a) *In general.* As long as any import relief imposed by the President pursuant to section 203 of the Trade Act remains in effect, the Commission will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the industry to make a positive adjustment to import competition.

(b) *Biannual reports.* The Commission will submit a report on the results of the monitoring to the President and the Congress not later than (1) the 2nd anniversary of the day on which the action under section 203 of the Trade Act first took effect, and (2) the last day of each 2-year period occurring after such first report. In the course of preparing each such report, the Commission will hold a hearing at which interested persons will be given a reasonable opportunity to be present, to produce evidence, and to be heard.

§ 206.53 Investigations to advise the President as to the probable economic effect of extension, reduction, modification, or termination of action.

Upon the request of the President, the Commission will conduct an investigation for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of any extension, reduction, modification, or termination of the action taken under section 203 which is under consideration.

§ 206.54 Investigations to evaluate the effectiveness of relief.

(a) *Investigation.* After any action taken under section 203 has terminated, the Commission will conduct an investigation for the purpose of evaluating the effectiveness of the relief action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b).

(b) *Hearing.* In the course of such investigation, the Commission will hold a hearing at which interested persons will be given an opportunity to be present, to produce evidence, and to be heard.

(c) *Time for reporting.* The Commission will submit its report to the President and to the Congress by no later than the 180th day after the day on which the action terminated.

2. Part 207, Subpart G, is revised to read as follows:

Subpart G—Implementing Regulations for the North American Free Trade Agreement

Sec.

Authority: Sec. 777(d) of the Tariff Act of 1930 (19 U.S.C. 1677f (d); secs. 402(g), 405 of the North American Free Trade Agreement Implementation Act (107 Stat. 2057, Pub. L. 103–182, Dec. 8, 1993).

Subpart G—Implementing Regulations for the North American Free Trade Agreement

§ 207.90 Scope.

This subpart sets forth the procedures and regulations for implementation of Article 1904 of the North American Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the North American Free Trade Agreement Implementation Act (19 U.S.C. 1516a and 1677f). These regulations are authorized by section 402(g) of the North American Free Trade Agreement Implementation Act and 19 U.S.C. 1335.

§ 207.91 Definitions.

As used in this subpart—

Administrative Law Judge means the United States Government employee appointed under section 310(f) of title 5 of the United States Code to conduct proceedings under this part in accordance with section 554 of title 5 of the United States Code;

Agreement means the North American Free Trade Agreement entered into among Canada, the United States of America and the United Mexican States ("Mexico"); or, with respect to binational panel proceedings between Canada and the United States underway as of the date of enactment of the Agreement, or any binational panel proceedings that may proceed between the United States and Canada following any withdrawal from the Agreement by the United States or Canada, the United States-Canada Free Trade Agreement entered into between the Government of Canada and the Government of the United States of America, effective as of January 1, 1989;

Article 1904 Rules means the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America, Canada and Mexico pursuant to the Agreement, or where applicable under the Agreement, the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America and Canada pursuant to the United States-Canada Free Trade Agreement, as amended;

Canadian Secretary means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on the Secretary's behalf;

Charged party means a person who is charged by the Commission with committing a prohibited act under 19 U.S.C. 1677f(f)(3);

Clerical person means a person such as a paralegal, secretary, or law clerk who is employed or retained by and under the direction and control of an authorized applicant;

Commission means the United States International Trade Commission;

Commission Secretary means the Secretary to the Commission;

Complaint means the complaint referred to in the Article 1904 Rules;

Counsel means persons described in the definition of "counsel of record" in Rule 3 of the Article 1904 Rules or the ECC Rules, and counsel for an interested person who plans to file a timely complaint or notice of appearance in the panel review.

Date of Service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, but if a deadline falls on a weekend or United States federal holiday, it shall be extended to the next working day;

Extraordinary challenge committee means the committee established pursuant to Annex 1904.13 of the Agreement to review decisions of a panel or conduct of a panelist;

ECC Rules means the Rules of Procedure for Article 1904 Extraordinary Challenge Committees adopted by the United States of America, Canada and Mexico, or where applicable, the Rules of Procedure for Article 1904 Extraordinary Challenge Committees adopted by the United States of America and Canada pursuant to the United States-Canada Free Trade Agreement, as amended;

Final determination, means "final determination" under Article 1911 of the Agreement;

Free Trade Area Country means the "free trade area country" as defined in 19 U.S.C. 1516a(f)(10);

Investigative attorney means an attorney designated by the Office of Unfair Import Investigations to engage in inquiries and proceedings under 19 CFR 207.100 *et seq.*

Mexican Secretary means the Secretary of the Mexican section of the Secretariat and includes any persons authorized to act on the Secretary's behalf;

NAFTA Act means the North American Free Trade Agreement Implementation Act, Pub. L. 103–182 (December 8, 1993);

Notice of Appearance means the notice of appearance provided for by Article 1904 Rules or by the ECC Rules;

Panel review means review of a final determination pursuant to chapter 19 of the Agreement, including review by an extraordinary challenge committee;

Party means, for the purposes of 19 CFR 207.100 through 207.120, either the investigative attorney(ies) or the charged party(ies);

Person means, for the purposes of 19 CFR 207.100 through 207.120, an individual, partnership, corporation, association, organization, or other entity;

Privileged information means all information covered by the provisions of the second sentence of 19 U.S.C. 1677f(f)(1)(A);

Professional means an accountant, economist, engineer, or other non-legal specialist who is employed by, or under the direction and control, of a counsel;

Prohibited act means the violation of a protective order, the inducement of a violation of a protective order, or the knowing receipt of information the receipt of which constitutes a violation of a protective order;

Proprietary information means confidential business information as defined in 19 CFR 201.6(a);

Protective Order means an administrative protective order issued by the Commission;

Relevant FTA Secretary means the Secretary referred to in Article 1908 of the Agreement;

Secretariat means the Secretariat established pursuant to Article 2002 of the Agreement and includes the Secretariat sections located in Canada, the United States, and Mexico;

Service address means the facsimile number, if any, and address of the counsel of record for a person or, where a person is not represented by counsel, the facsimile number, if any, and address set out by a person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served or, where a Change of Service Address has been filed by a person, the facsimile number, if any, and address set out as the service address in that form;

Service list means the list maintained by the Commission Secretary under 19 CFR 201.11(d) of persons in the administrative proceeding leading to the final determination under panel review;

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on the Secretary's behalf;

Except as otherwise provided in this subpart, the definitions set forth in the Article 1904 Rules and the ECC Rules are applicable to this subpart and to any protective orders issued pursuant to this subpart.

§ 207.92 Procedures for commencing review of final determinations.

(a) *Notice of Intent to Commence Judicial Review.* A Notice of Intent to Commence Judicial Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Department of Commerce in its regulations at 19 CFR part 356.

(b) *Request for Panel Review.* A Request for Panel Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Department of Commerce in its regulations at 19 CFR part 356.

§ 207.93 Protection of proprietary information during panel and committee proceedings.

(a) *Requests for protective orders.* A request for access to proprietary information pursuant to 19 U.S.C. 1677f(f)(1) shall be made to the Secretary of the Commission.

(b) *Persons authorized to receive proprietary information under protective order.* The following persons may be authorized by the Commission to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Commission:

(1) The members of a binational panel or an extraordinary challenge committee, any assistant to a member, court reporters and translators;

(2) Counsel and professionals, provided that the counsel or professional does not participate in competitive decision-making, as defined in *US Steel Corp.* v. *United States*, 730 F.2d 1465 (Fed. Cir. 1984), for the person represented or for any person that would gain a competitive advantage through knowledge of the proprietary information sought;

(3) Clerical persons who are employed or retained by and under the direction and control of a person described in paragraph (b) (1), (2), (5) or (6) of this section who has been issued a protective order, if such clerical persons:

(i) Are not involved in the competitive decision-making, or the support functions for the competitive decision-making, of a participant to the proceeding or of any person that would gain a competitive advantage through knowledge of the proprietary information sought, and

(ii) Have agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(4) The Secretaries of the United States, Canadian and Mexican sections of the Secretariat and members of their staffs;

(5) Any officer or employee of the United States Government who the United States Trade Representative informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(6) Any officer or employee of the Government of Canada or the Government of Mexico who the Canadian Minister of Trade or the Mexican Secretary of Commerce and Industrial Development, as the case may be, informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees.

(c) *Procedures for obtaining access to proprietary information under protective order.*—(1) *Persons who must file an application for release under protective order.* To be permitted access to proprietary information in the administrative record of a determination under panel review, all persons described in paragraphs (b) (1), (2), (4), (5) or (6) of this section, unless described in paragraph (c)(5)(i) of this section, shall file an application for a protective order.

(2) *Contents of applications for release under protective order.* (i) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to protective order that incorporate the terms of this rule. The Commission Secretary shall supply the United States Secretary with copies of the forms for persons described in paragraphs (b) (1),

(4), (5) and (6) of this section. Other applicants may obtain the forms at the Commission Secretary's office at 500 E Street SW., Washington, DC 20436.

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than:

(*1*) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(*2*) The person from whom the information was obtained,

(*3*) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(*4*) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b) (1), (2), (5), or (6) of this section who has been issued a protective order, if such clerical person has signed and dated an agreement to be bound by the terms set forth in the application for a protective order of the person who retains or employs him or her;

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Article 1904 of the Agreement;

(C) Upon completion of panel review, or at such other date as may be determined by the Commission Secretary, return to the Commission, or certify to the Commission Secretary the destruction of, all documents released under the protective order and all other material (such as briefs, notes, or charts), containing the proprietary information released under the protective order, except that those described in paragraph (b)(1) of this section may return such documents and other materials to the United States Secretary. The United States Secretary may retain a single file copy of each document for the official file.

(D) Update information in the application for protective order as required by the protective order; and

(E) Acknowledge that the person becomes subject to the provisions of 19 U.S.C. 1677f(f) and to this subpart, as well as corresponding provisions of Canadian and Mexican law on disclosure undertakings concerning proprietary information.

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (b)(2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the United States, Canadian or Mexican Secretariat. An application for any person described in paragraph (b)(5) or (b)(6) of this section may be filed at any time after the United States Trade Representative, the Canadian Minister of Trade, or the Mexican Secretary of Commerce and Industrial Development, as the case may be, has notified the Commission Secretary that such person requires access.

(4) *Filing and service of applications*—(i) *Applications of persons described in paragraph (b)(1) of this section.* A person described in paragraph (b)(1) of this section shall submit the completed original of the form to the United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus three (3) copies of the application with the Commission Secretary.

(ii) *Applications of persons described in paragraph (b)(2) of this section*—(A) *Filing.* A person described in paragraph (b)(2) of this section shall file the completed original of the form and three (3) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

(B) *Service.* If an applicant files before the deadline for filing notices of appearance for the panel review, the applicant shall concurrently serve each person on the service list with a copy of the application. If the applicant files after the deadline for filing notices of appearance for the panel review, the applicant shall serve each participant in the panel review in accordance with the applicable Article 1904 Rules and ECC Rules. Service on a person may be effected by delivering a copy to the person's service address; by sending a copy to the person's service address by facsimile transmission, expedited courier service, expedited mail service; or by personal service.

(iii) *Applications of persons described in paragraph (b)(4) of this section.* A person described in paragraph (b)(4) of this section shall file the original and three (3) copies of the protective order application with the Commission Secretary.

(iv) *Applications of persons described in paragraph (b)(5) of this section.* A person described in paragraph (b)(5) of this section shall file the original and three (3) copies with the Commission Secretary and four (4) copies with the United States Secretary.

(v) *Applications of persons described in paragraph (b)(6) of this section.* A person described in paragraph (b)(6) of this section shall submit the completed original of the protective order application to the relevant FTA Secretary. The relevant FTA Secretary in turn, shall file the original and three (3) copies with the Commission Secretary.

(5) *Persons who retain access to proprietary information under a protective order issued during the administrative proceedings.* (i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, become immediately subject to the terms and conditions of Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File four (4) copies of the original application, of all existing updates to that application, and of the protective order with the United States Secretary; and

(B) Serve three (3) copies of the protective order and of all existing updates upon the Commission Secretary.

(iii) Any person described in paragraph (c)(5)(i) of this section need not submit a new application for a protective order at the commencement of a panel review.

(d) *Issuance of protective orders*—(1) *Applicants described in paragraphs (b)(1), (4), (5) and (6) of this section.* Upon approval of an application of persons described in paragraphs (b)(1), (4), (5), or (6) of this section, the Commission Secretary shall issue a protective order permitting release of proprietary information. Any member of a binational panel proceeding initiated under the United States-Canada Free Trade Agreement to whom the

Commission Secretary issues a protective order must countersign it and return one copy of the countersigned order to the United States Secretary. Any other applicant under paragraph (b)(1) of this section must file a copy of the order with the United States Secretary.

(2) *Applicants described in paragraph (b)(2) of this section.* (i) The Commission shall not rule on an application filed by a person described in paragraph (b)(2) until ten (10) days after the request is filed unless there is a compelling need to rule more expeditiously. Any person may file an objection to the application within seven (7) days of the application's filing date, stating the specific reasons why the Commission should not grant the application. One (1) copy of the objection shall be served on the applicant and on all persons who were served with the application. Any reply to an objection will be considered if it is filed and served before the Commission Secretary renders a decision. Service of objections and replies shall be made in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Denial of application.* The Commission's Secretary may deny an application by serving a letter notifying the applicant of the decision and the reasons therefor within fourteen (14) days of the receipt of the application. The letter shall advise the applicant of the right to appeal to the Commission. Any appeal must be made within five (5) days of the service of the Commission Secretary's letter.

(iii) *Appeal from denial of an application.* An appeal from a denial of a request must be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Such appeal must be served in accordance with paragraph (c)(4)(ii)(B) of this section. The Commission shall make a final decision granting or denying the appeal within thirty (30) days from the day on which the application was filed with the Commission Secretary.

(iv) *Approval of the application.* If the Commission Secretary does not deny an application pursuant to paragraph (d)(2)(ii) of this section, the Commission shall, by the fifteenth day following the receipt of the application, issue a protective order permitting the release of proprietary information to the applicant.

(v) *Filing of protective orders.* If a protective order is issued to a person described in paragraph (b)(2) of this section, the person shall immediately file one (1) copy of the protective order with the United States Secretary.

(e) *Retention of protective orders.* The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, including protective orders filed in accordance with paragraph (b)(6)(ii) of this section.

(f) *Filing of amendments to granted applications.* Any person who has been issued a protective order under this section shall:

(1) If a person described in paragraph (b)(1) of this section, submit any amendments to the application for a protective order to the United States Secretary, who shall file the original and three (3) copies with the Commission Secretary;

(2) If a person described in paragraph (b)(2) of this section, file the original and three (3) copies of any amendments to the application with the Commission Secretary and four (4) copies with the United States Secretary; or

(3) If any other person, file the original and three (3) copies of any amendments to the application with the Commission Secretary.

(g) *Modification or revocation of protective orders.* (1) Any person may file with the Commission Secretary a request that a protective order issued under this section be modified or revoked because of changed conditions of fact or law, or on grounds of the public interest. The request shall state the changes desired and include any supporting materials and arguments. The person filing the request shall serve a copy of the request upon the person to whom the protective order was issued.

(2) Any person may file a response to the request within twenty (20) days after it is filed, unless the Commission issues a notice indicating otherwise. After consideration of the request and any responses thereto, the Commission shall take such action as it deems appropriate.

(3) If a request filed under this paragraph alleges that a person is violating the terms of a protective order, the Commission may treat the request as a report of violation under § 207.101 of this subpart.

(4) The Commission may also modify or revoke a protective order on its own initiative.

(5) If the Commission revokes, amends or modifies a person's protective order, it shall provide to the person, the United States Secretary and all participants a copy of the Notice of Revocation, amendment or modification.

§ 207.94 Protection of privileged information during panel and committee proceedings.

When and if a panel or extraordinary challenge committee decides that the Commission is required, pursuant to the United States law, to grant access pursuant to protective order to information for which the Commission has claimed a privilege, any individual to whom a panel or extraordinary challenge committee has directed the Commission release information and who is otherwise within the category of individuals eligible to receive proprietary information pursuant to 19 CFR 207.93(b), may file an application for a protective order with the Commission. Upon receipt of such application, the Commission Secretary shall certify to the Commission that a panel or extraordinary challenge committee has required the Commission to release such information to specified persons, pursuant to 19 U.S.C. 1677f(f)(1). Twenty-four hours following such certification, the Commission Secretary shall issue a protective order releasing such information to any authorized applicant subject to terms and conditions equivalent to those described in 19 CFR 207.93(c)(2).

Procedures for Imposing Sanctions for Violation of the Provisions of a Protective Order Issued During Panel and Committee Proceedings

§ 207.100 Sanctions.

(a) A person, other than a person exempted from this regulation by the provisions of 19 U.S.C. 1677f(f)(4), who is determined under this subpart to have committed a prohibited act, may be subject to one or more of the following sanctions:

(1) A civil penalty not to exceed $100,000 for each violation, each day of a continuing violation constituting a separate violation;

(2) Debarment from practice in any capacity before the Commission, which disbarment may, in appropriate circumstances, include such person's partners, associates, employers and employees, for a designated time period following publication of a determination that the protective order has been breached;

(3) Denial of further access to proprietary or privileged information covered by the breached protective order or to proprietary information in future Commission proceedings;

(4) An official reprimand by the Commission;

(5) In the case of an attorney, accountant, or other professional, referral of the facts underlying the

prohibited act to the ethics panel or other disciplinary body of the appropriate professional association or licensing authority;

(6) When appropriate, referral of the facts underlying the violation to the United States Trade Representative or his or her designees, or to another government agency; and

(7) Any other administrative sanctions as the Commission determines to be appropriate.

(b) Each partner, associate, employer, and employee described in paragraph (a)(2) of this section is entitled to all the administrative rights set forth in this subpart.

(c) For the purposes of this subpart, the knowing receipt of information the receipt of which constitutes a violation of a protective order includes, but is not limited to, the reading or unauthorized dissemination of the information covered by a protective order by a person who knows or should reasonably believe that he or she is not authorized to read or disseminate such information.

207.101 Reporting of prohibited act and commencement of investigation.

(a) Any person who has information indicating that a prohibited act has been committed shall immediately report all pertinent facts relating thereto to the Commission Secretary.

(b) Upon receipt, the Commission Secretary shall record the information, assign an investigation number, and forward all information he or she received to the Office of Unfair Import Investigations.

(c) As expeditiously as possible, the Office of Unfair Import Investigations shall conduct an inquiry to determine whether there is reasonable cause to believe that a person or persons have committed a prohibited act. At any time, the Office of Unfair Import Investigations may request that the Commission assign an administrative law judge to oversee the inquiry.

(d) At the conclusion of the inquiry, the Office of Unfair Import Investigations shall assess whether the available information is sufficient to provide reasonable cause to believe that a person or persons have committed a prohibited act.

207.102 Initiation of proceedings.

(a) Upon completion of the inquiry,

(1) If the Office of Unfair Import Investigations concludes that there is not reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall:

(i) Submit a report to the Commission; and

(ii) Unless the Commission directs otherwise, the file shall be closed and returned to the Commission Secretary.

(2) If the Office of Unfair Import Investigations concludes that there is reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall:

(i) Make a recommendation to the Commission regarding whether and to what extent it is appropriate to notify the person whose proprietary information may have been compromised; and

(ii) Submit a report and recommendation to the Commission regarding whether to initiate sanctions proceedings or to take other appropriate action.

(b) The Commission may make any appropriate determination regarding the initiation of sanctions proceedings, including rejecting, approving, or approving and amending any recommendation made by the Office of Unfair Import Investigations.

(c) If the Commission determines that it is appropriate to issue a charging letter, the Commission shall appoint an administrative law judge to oversee the proceeding and the Commission Secretary shall initiate a proceeding under this Subpart by issuing a charging letter as set forth in 19 CFR 207.103.

(d) If the Commission determines that it is appropriate to initiate proceedings, but that the party to be charged is beyond the jurisdiction of the Commission and within the jurisdiction of another Free Trade Area country, or that for other reasons an authorized agency of another Free Trade Area country would be the more appropriate forum for initiation of a proceeding, the Commission shall take the necessary steps for issuance of a letter requesting the authorized agency of another Free Trade Area country to initiate proceedings under applicable law on the basis of an alleged prohibited act.

(e) The Commission may make any determination regarding notification about the alleged prohibited act and the relevant underlying facts to the persons who submitted the proprietary information that allegedly has been disclosed. A determination by the Commission on this subject does not foreclose the administrative law judge from redetermining at any time during the hearing whether notification to the compromised party is appropriate.

(f) If the Commission determines that it is not appropriate to issue a charging letter or to refer the facts to the authorized agency of another Free Trade Area country, the file shall be closed and returned to the Commission Secretary, unless the Commission directs otherwise.

(g) All aspects of the inquiry shall remain confidential, except as deemed reasonably necessary to the Office of Unfair Import Investigations to gather relevant information and to protect the interests of the person who submitted the proprietary information, or except as otherwise ordered by the Commission. Except as the Commission may otherwise order, the Commission Secretary shall maintain all closed investigatory files in confidence to the extent permitted by law, and shall destroy any documentary evidence containing allegations of a prohibited act for which no proceeding is initiated one year after the file is closed.

§ 207.103 Charging letter.

(a) *Contents of charging letter.* Each charged party shall be served by the Commission with a copy of a charging letter and any accompanying motion for interim measures, as provided for in 19 CFR 207.106. The charging letter shall include:

(1) Allegations concerning a prohibited act;

(2) A citation to § 207.100 of this subpart, for a listing of sanctions that may be imposed for a prohibited act;

(3) A statement that a proceeding has been initiated and that an APA hearing will be held before an administrative law judge;

(4) A statement that the charged party or his or her attorney may request the issuance of an appropriate administrative protective order to obtain access to the information upon which the charge is based;

(5) A statement that the charged party has a right to retain an attorney at the charged party's own expense for purposes of representation; and

(6) A statement that the charged party has the right to request in the response described in § 207.104 of this subpart that the proceedings remain confidential to the extent practicable.

(b) *Service of charging letter.* (1) The charging letter shall be served in a double envelope. The inner envelope shall indicate that it is to be opened only by the addressee. Service of a charging letter shall be made by one of the following methods:

(i) Mailing a copy by registered or certified mail addressed to the charged party at the party's last known permanent address; or

(ii) Personal service; or

(iii) Any other method acceptable under Rule 4 of the Federal Rules of Civil Procedure.

(2) Service shall be evidenced by a certificate of service signed by the person making such service.

(c) *Confidentiality of charging letter.* Prior to entry of an order by the administrative law judge under § 207.105 of this subpart, the charging letter will be confidential and disclosed only to necessary Commission staff and the charged parties.

(d) *Amendment of charging letter.* (1) At any time after proceedings have been initiated, the investigative attorney may move for leave to amend or withdraw the charging letter.

(2) If the administrative law judge determines that the charging letter should be amended to include additional parties, the judge shall issue a recommended determination to that effect. The Commission shall review the recommended determination, and issue a determination granting or denying the motion to amend the charging letter to include additional parties.

(3) Upon motion, the administrative law judge may grant leave to amend the charging letter for good cause shown upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties already charged.

(4) Any amended charging letter shall be served upon all charged parties in the form and manner set forth in paragraphs (a) and (b) of this section.

§ 207.104 Response to charging letter.

(a) *Time for filing.* A charged party shall have twenty (20) days from the date of service of the charging letter within which to file a written response to the allegations made in the charging letter unless otherwise ordered by the administrative law judge.

(b) *Form and content.* Each response shall be under oath and signed by the charged party or its duly authorized officer, attorney, or agent, with the name, address, and telephone number of the same. Each charged party shall respond to each allegation in the charging letter, and may set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission or denial of each fact alleged in the charging letter, or if the charged party is without knowledge of any such fact, a statement to that effect.

(c) *Request for confidentiality.* The response shall contain a statement as to whether the charged party seeks an order to maintain the confidentiality of all or part of the proceedings to the extent practicable, pursuant to § 207.105 of this subpart.

§ 207.105 Confidentiality.

(a) *Protection of proprietary and privileged information.* As the administrative law judge deems reasonably necessary for the preparation of the defense of a charged party, the attorney for the charged party may be granted access in these proceedings to proprietary information or to the privileged information, the disclosure of which is the subject of the proceedings. Any such access shall be under protective order consistent with the provisions of this subpart.

(b) *Confidentiality of proceedings.* Upon the request of any charged party pursuant to § 207.106 of this subpart, the administrative law judge will issue an appropriate confidentiality order. This order will provide for the confidentiality, to the extent practicable and permitted by law, of information relating to allegations concerning the commitment of a prohibited act, consistent with public policy considerations and the needs of the parties in conducting the sanctions proceedings. The order will provide that all proceedings under this provision shall be kept confidential within the terms of the order, except to the extent that a discussion of such proceedings is incorporated into a published final decision of the Commission. Any confidential information not disclosed in such decision will remain protected.

§ 207.106 Interim measures.

(a) At any time after proceedings are initiated, the administrative law judge, upon motion, or on his or her own initiative, may issue a recommended determination to revoke the allegedly-violated protective order, to disclose information about the proceedings that would otherwise be kept confidential, or to take other appropriate interim measures.

(b) Before issuing a determination recommending interim sanctions, the administrative law judge shall afford a party against whom such measures are proposed the opportunity to oppose them. The administrative law judge shall ordinarily decide any motion under this section no more than twenty (20) days after it is filed.

(c) The Commission shall review any recommended determination regarding the imposition of interim measures within twenty (20) days from its issuance or such other time as it may order. The Commission may impose any appropriate interim sanctions.

(d) The administrative law judge may recommend to the Commission that interim measures be modified or revoked. The Commission shall rule on such recommendation within ten (10) days after its issuance or such other time as it may order.

(e) The Commission Secretary shall immediately notify the Secretariat of any interim measures that revoke or modify an outstanding protective order in an ongoing panel review. The Commission Secretary shall also immediately notify the Secretariat of any revocation or modification of an interim measure.

§ 207.107 Motions.

(a) *Presentation and disposition.* (1) After issuance of the charging letter and while part of the proceeding is pending before the administrative law judge, all motions relating to that part of the proceeding shall be addressed to the administrative law judge.

(2) While part of a proceeding is pending before the Commission, all motions relating to that part of the proceeding shall be addressed to the Chairman of the Commission. All written motions shall be filed with the Commission Secretary and served upon all parties.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses.* Any response to a motion shall be filed within ten (10) days after service of the motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Service.* All motions, responses, replies, briefs, petitions, and other documents filed in sanctions proceedings under this subpart shall be served by the party filing the document upon each other party. Service shall be made upon the attorney for the party unless the administrative law judge or the Commission orders otherwise.

§ 207.108 Preliminary conference.

As soon as practicable after the response to the charging letter is filed, the administrative law judge shall direct counsel or other representatives for the parties to meet with him or her at a preliminary conference, unless the administrative law judge determines that such a conference is not necessary. At the conference, the administrative law judge shall consider the issuance of such orders as the administrative law judge deems necessary for the conduct of the proceedings. Such orders may include, as appropriate under these regulations, the establishment of a discovery schedule or the issuance of an order, if requested, to provide for maintaining the confidentiality of the proceedings pursuant to § 207.105(b) of this subpart.

§ 207.109 Discovery.

(a) *Discovery methods.* All parties may obtain discovery under such terms and limitations as the administrative law judge may order. Discovery may be by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things for inspection and other purposes; and

(4) Requests for admissions.

(b) *Sanctions.* If a party or an officer or agent of a party fails to comply with a discovery order, the administrative law judge may take such action as he deems reasonable and appropriate, including the issuance of evidentiary sanctions or deeming the respondent to be in default.

(c) *Depositions of nonparty officers or employees of the United States or another Free Trade Area country government.*—(1) *Depositions of Commission officers or employees.* A party desiring to take the deposition of an officer or employee of the Commission (other than a member of the Office of Unfair Import Investigations or of the Office of the Administrative Law Judges), or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission direct that officer or employee to testify or produce the requested materials.

(2) *Depositions of officers or employees of other United States agencies, or of the government of another Free Trade Area country.* A party desiring to take the deposition of an officer or employee of another agency, or of the government of another Free Trade Area country, or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission seek the testimony or production of requested material from the officer or employee.

§ 207.110 Subpoenas.

(a) *Application for issuance of a subpoena.* Except as provided in § 207.109(c) of this subpart, an application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. The application shall be made in writing, and shall specify the material to be produced as precisely as possible, showing the relevancy of the material and the reasonableness of the scope of the subpoena. The application shall be ruled upon by the administrative law judge.

(b) *Enforcement of a subpoena.* A motion for enforcement of a subpoena shall be made to the administrative law judge. Upon consideration of the motion and any response thereto, the administrative law judge shall recommend to the Commission in favor of or against enforcement. The administrative law judge's recommendation shall provide the basis therefor, and shall address each of the criteria necessary for enforcement of an administrative subpoena. After consideration of the administrative law judge's recommendation, the Commission shall determine whether initiation of enforcement proceedings is appropriate.

(c) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge or the Commission.

§ 207.111 Prehearing conference.

The administrative law judge may direct the attorney or other representatives for the parties to meet with him or her to consider any or all of the following:

(a) Simplification and clarification of the issues;

(b) Scope of the hearing;

(c) Stipulations and admissions of either fact or the content and authenticity of documents;

(d) Disclosure of the names of witnesses and the exchange of documents or other physical evidence that will be introduced in the course of the hearing; and

(e) Such other matters as may aid in the orderly and expeditious disposition of the proceedings.

§ 207.112 Hearings.

(a) *Purpose of and scheduling of hearings.* An opportunity for a hearing before an administrative law judge shall be provided for each action initiated under § 207.102 of this subpart. The purpose of such hearing shall be to receive evidence and hear argument in order to determine whether a charged party has committed a prohibited act and if so, what sanctions are appropriate. Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed, unless otherwise ordered by the administrative law judge.

(b) *Joinder or consolidation.* The administrative law judge may order such joinder or consolidation of proceedings initiated under § 207.102 of this subpart at the administrative law judge's discretion.

(c) *Compliance with Administrative Procedure Act.* The administrative law judge shall conduct a hearing that complies with the requirements of section 554 of title 5 of the United States Code.

§ 207.113 The record.

(a) *Definition of the record.* The record shall consist of—

(1) The charging letter and response, motions and responses, and other documents and exhibits properly filed with the Commission Secretary;

(2) All orders, notices, and the recommended or initial determinations of the administrative law judge;

(3) Orders, notices, and any final determination of the Commission;

(4) Hearing transcripts, and evidence admitted at the hearing; and

(5) Any other items certified into the record by the administrative law judge.

(b) *Certification of the record.* The record shall be certified to the Commission by the administrative law judge upon his or her filing of the initial determination.

§ 207.114 Initial determination.

(a) *Time for filing of initial determination.* (1) Except as may otherwise be ordered by the Commission, within ninety (90) days of the date of issuance of the charging letter, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether each charged party has committed a prohibited act, and as to appropriate sanctions.

(2) The administrative law judge may request the Commission to extend the time period for issuance of the initial determination for good cause shown.

(b) *Contents of the initial determination.* The initial determination shall include the following:

(1) An opinion making all necessary findings of fact and conclusions of law and the reasons therefor, and

(2) A statement that the initial determination shall become the determination of the Commission unless a party files a petition for review of the determination pursuant to § 207.115 or the Commission pursuant to § 207.116 of this subpart, orders on its own motion a review of the initial determination or certain issues therein.

(c) *Burden of proof.* A finding that a charged party committed a prohibited act shall be supported by clear and convincing evidence.

(d) *Effect of initial determination.* The initial determination shall become the determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission within such time orders review of the initial determination or certain issues therein pursuant to § 207.115 or 207.116 of this subpart or by order shall have changed the effective date of the initial determination. In the event an initial determination becomes the determination of the Commission, the parties shall be notified thereof by the Commission Secretary.

§ 207.115 Petition for review.

(a) *The petition and responses.* (1) Any party may request a review by the Commission of the initial determination by filing with the Commission Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in default.

(2) Any person who wishes to obtain judicial review pursuant to 19 U.S.C. 1677f(f)(5) must first seek review by the Commission in accordance with the procedures set forth in this regulation governing petitions for review.

(3) Any petition for review must be filed within fourteen (14) days after service of the initial determination on the charged party. The petition shall:

(i) Identify the party seeking review;

(ii) Specify the issues upon which review is sought, including a statement as to whether review is sought of the initial determination regarding the commitment of a prohibited act, or of the initial determination regarding sanctions;

(iii) Set forth a concise statement of the relevant law or material facts necessary for consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review is necessary or appropriate.

(4) Any issue not raised in the petition for review filed under this section will be deemed to have been abandoned and may be disregarded by the Commission.

(5) Any party may file a response to the petition within seven (7) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which the party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant a petition for review, in whole or in part, within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall base its decision whether to grant a petition for review upon the petition and response thereto, without oral argument or further written submissions, unless the Commission shall order otherwise.

(3) The Commission shall grant a petition for review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for the filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition shall be served by the Commission Secretary on all parties.

§ 207.116 Commission review on its own motion.

Within forty-five (45) days of the date of service of the initial determination, the Commission on its own initiative shall order review of an initial determination or certain issues therein upon request of any Commissioner.

§ 207.117 Review by Commission.

On review, the parties may not present argument on any issue that is not set forth in the notice of review; and the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. The Commission may make any findings or conclusions that in its judgment are proper based on the record in the proceeding.

§ 207.118 Role of the General Counsel in advising the Commission.

The Assistant General Counsel for Section 337 Investigations shall serve as Acting General Counsel for the purpose of advising the Commission on proceedings brought under this subpart if the prohibited act described in the charging letter involves a protective order issued in connection with a panel review that was pending when the letter was issued, and the General Counsel participated in the panel review. No other Commission attorney shall advise the Commission on proceedings under this Subpart concerning a protective order issued during a panel review in which the attorney participated.

§ 207.119 Reconsideration.

(a) *Motion for reconsideration.* Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a motion for reconsideration, setting forth the relief desired and the grounds in support thereof. Any motion filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the moving party had no opportunity to submit arguments.

(b) *Disposition of motion for reconsideration.* The Commission shall grant or deny the motion for reconsideration. No response to a motion for reconsideration will be received unless requested by the Commission, but a motion for reconsideration will not be granted in the absence of such a request. If the motion to reconsider is granted, the Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 207.120 Public notice of sanctions.

If the final Commission decision is that there has been a prohibited act, and that public sanctions are to be imposed, notice of the decision will be published in the **Federal Register** and forwarded to the Secretariat. Such publication will occur no sooner than fourteen (14) days after issuance of a final decision or after any motion for reconsideration has been denied. The Commission Secretary shall also serve notice of the Commission decision upon such departments and agencies of the United States, Canadian and Mexican governments as the Commission deems appropriate.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Neomycin, Penicillin, Polymyxin, Hydrocortisone Topical Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect codification of a previously approved new animal drug application (NADA)

held by Upjohn Co. The NADA provides for the safe use of Forte-Topical® Suspension (neomycin, penicillin, polymyxin, hydrocortisone suspension) as a topical antibacterial and anti-inflammatory agent in dogs.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Upjohn Co., Kalamazoo, MI 49001, is sponsor of NADA 65–119 which provides for the safe use of Forte-Topical® Suspension. Each milliliter contains 25 milligrams (mg) of neomycin sulfate, 10,000 international units (IU's) of penicillin G procaine, 5,000 IU's of polymyxin B sulfate, 2 mg of hydrocortisone acetate, and 1.25 mg of hydrocortisone sodium succinate for the topical treatment of dogs for summer eczema, atopic dermatitis, interdigital eczema, and otitis externa caused by bacteria susceptible to neomycin, penicillin, and polymyxin B. The product was originally approved on September 15, 1959. Accordingly, the regulations in 21 CFR 524.1484h are amended to reflect approval of the NADA.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(i) for NADA's approved prior to July 1, 1975, a summary of safety and effectiveness data and information submitted to support approval of this application is not required.

FDA has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 524.1484h is added to read as follows:

§ 524.1484h Neomycin, penicillin, polymyxin, hydrocortisone suspension.

(a) *Specifications.* Each milliliter of suspension contains 25 milligrams of neomycin sulfate equivalent to 17.5 milligrams of neomycin, 10,000 international units of penicillin G procaine, 5,000 international units of polymyxin B sulfate, 2 milligrams of hydrocortisone acetate, and 1.25 milligrams of hydrocortisone sodium succinate.

(b) *Sponsor.* See 000009 in § 510.600(c) of this chapter.

(c) *Special considerations.* The labeling shall state: This medication contains penicillin. Allergic reactions in humans are known to occur from topical exposure to penicillin.

(d) *Conditions of use—dogs—(1) Amount.* Rub a small amount into the involved area 1 to 3 times a day. After definite improvement, it may be applied once a day or every other day.

(2) *Indications for use.* Treatment of summer eczema, atopic dermatitis, interdigital eczema, and otitis externa caused by bacteria susceptible to neomycin, penicillin, and polymyxin B.

(3) *Limitations.* For use in dogs only. Shake drug thoroughly and clean lesion before using. If redness, irritation, or swelling persists or increases, discontinue use and reevaluate diagnosis. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 27, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–2400 Filed 2–2–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations; Blocking of Offshore Foreign Currency Deposits.

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: Consistent with action by the United Nations Security Council calling upon member states to block certain financial assets of the Government of Libya, and in order further to tighten the U.S. blocking of Libyan governmental assets, the Office Foreign Assets Control is amending the Libyan Sanctions Regulations to revoke a general license that unblocked Libyan government deposits in currencies other than U.S. dollars held abroad by U.S. persons.

EFFECTIVE DATE: January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief of Compliance (tel.: 202/622–2490), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR"), to revoke § 550.516, which unblocked, by general license, deposits in currencies other than U.S. dollars held by U.S. persons abroad, if otherwise blocked under the LSR. FAC's amendment is consistent with action by the United Nations Security Council in Resolution 883 of November 11, 1993. The Security Council determined in that resolution that the continued failure of the Government of Libya ("GOL") to demonstrate by concrete actions its renunciation of terrorism, and in particular the GOL's continued failure to respond fully and effectively to the requests and decisions of the Security Council in Resolutions 731 and 748, concerning the bombing of the Pan Am 103 and UTA 772 flights, constituted a threat to international peace and security. Accordingly, Resolution 883 called upon member states, *inter alia*, to freeze certain GOL financial assets in their territories, and to ensure that their nationals did not make such funds or any other funds or financial resources available to the GOL or any entity owned or controlled by the GOL. In light of this resolution, FAC is revoking § 550.516 to eliminate an exception that had existed to the comprehensive blocking of GOL property required by Executive Order 12544 of January 8, 1986 (3 CFR, 1986 Comp., p. 183) and by the LSR.

Because the LSR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of

proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR part 550 is amended as follows:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 2349aa–9; 3 U.S.C. 301; E.O. 12543, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 3 CFR, 1992 Comp. p. 294.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 550.516 [Removed]

2. Section 550.516 is revoked and removed.

Dated: January 7, 1994.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 10, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–2476 Filed 1–31–94; 3:29 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG69

Disease Associated With Exposure to Certain Herbicide Agents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning presumptive service connection for certain diseases even though there is no record of the disease during service. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs under the authority granted by the Agent Orange Act of 1991 that there is an association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of Hodgkin's disease and porphyria cutanea tarda (PCT). The intended effect of this amendment is to establish presumptive service connection for those conditions based on herbicide exposure.

EFFECTIVE DATE: This amendment is effective February 3, 1994, as provided by Public Law 102–4.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.307(a), 3.309(e), and 3.311a to establish presumptive service connection for Hodgkin's disease and PCT based on exposure to herbicides in the **Federal Register** of September 28, 1993 (58 FR 50528–30). Interested persons were invited to submit written comments, suggestions or objections concerning the proposal on or before October 28, 1993. Since no comments were received, the proposed amendments are adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 4, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.307, the heading and paragraph (a)(6) are revised to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) * * *

(6) *Diseases associated with exposure to certain herbicide agents.* (i) For the purposes of this section, the term "herbicide agent" means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era, specifically: 2,4–D; 2,4,5–T and its contaminant TCDD; cacodylic acid; and picloram.

(ii) The diseases listed at § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne and porphyria cutanea tarda shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era and has a disease listed at § 3.309(e) shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the Vietnam era. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

* * * * *

§ 3.307 [Amended]

3. In § 3.307(a), the first sentence of the introductory text, remove the words "a disease associated with service in the Republic of Vietnam" and insert, in

their place, the words "a disease associated with exposure to certain herbicide agents".

4. In § 3.309, paragraph (e) is revised to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(e) *Disease associated with exposure to certain herbicide agents.* If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of § 3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of § 3.307(d) are also satisfied.

Chloracne or other acneform disease consistent with chloracne
Hodgkin's disease
Non-Hodgkin's lymphoma
Porphyria cutanea tarda
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

Note: The term "soft-tissue sarcoma" includes the following:

Adult fibrosarcoma
Dermatofibrosarcoma protuberans
Malignant fibrous histiocytoma
Liposarcoma
Leiomyosarcoma
Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
Rhabdomyosarcoma
Ectomesenchymoma
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
Proliferating (systemic) angioendotheliomatosis
Malignant glomus tumor
Malignant hemangiopericytoma
Synovial sarcoma (malignant synovioma)
Malignant giant cell tumor of tendon sheath
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
Malignant mesenchymoma
Malignant granular cell tumor
Alveolar soft part sarcoma
Epithelioid sarcoma
Clear cell sarcoma of tendons and aponeuroses
Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

§ 3.311a [Removed]

§ 3.311b [Redesignated as § 3.311]

5. Section 3.311a is removed and § 3.311b is redesignated as § 3.311.

[FR Doc. 94–2403 Filed 2–2–94; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–4833–1]

Standards of Performance for New Stationary Sources; Sewage Treatment Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment of requirements.

SUMMARY: This action amends 40 CFR part 60, subpart O, Standards of Performance for Sewage Treatment Plants. Specifically, provisions requiring metals analysis of air samples and sludge samples are deleted. This deletion is occasioned by the promulgation of final regulations under section 405(a) of the Clean Water Act (CWA) on February 19, 1993, which eliminates the reason for metals testing under this subpart.

EFFECTIVE DATE: This action will be effective April 4, 1994 unless notice has been received, within 30 days from the publication of this rule, that adverse or critical comments will be submitted by an interested party. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be submitted to: Mr. Eugene Crumpler, U.S. Environmental Protection Agency, Industrial Studies Branch, Emission Standards Division (MD–13), Research Triangle Park, North Carolina, 27711. Telephone: (919) 541–0881.

FOR FURTHER INFORMATION CONTACT: Eugene P. Crumpler, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–0881.

SUPPLEMENTARY INFORMATION:

Background

Subpart O of 40 CFR part 60 establishes New Source Performance Standards (NSPS), pursuant to section 111 of the Clean Air Act (Act) for new, modified or reconstructed sewage sludge incinerators. The NSPS limits emissions of particulate matter (PM) discharged to the atmosphere to 0.65 g/kg dry sludge input (1.30 lb/ton dry sludge input) and the opacity of any gases discharged to 20 percent.

Furthermore, the NSPS presents test methods and procedures for compliance demonstration. Among these is paragraph 60.154(d) (3)–(5) which calls for the analysis of air emissions samples collected by EPA method 5 and composite samples of sludge for ten metals. This requirement was added to the October 6, 1988 regulation because, "* * * EPA's intention (is) to consolidate existing waste management authorities with the broad authorities provided under section 405 of the CWA. Section 405(d) of the CWA requires EPA to develop regulations for the use and disposal of sewage sludge. The measurement of metals will assist the Agency in establishing guidelines for State and local sludge management programs. Also, this will assist the Agency in determining if future regulatory action is warranted."

Need for the Action

As EPA has promulgated the final sewage sludge regulations pursuant to section 405(d) of the CWA (published February 19, 1993 (58 FR 9248)), with requirements for testing and control of metals from sewage sludge incinerators that supersede the provisions of § 60.154(d)(3) through (5), there is no longer a need to collect data on metals emissions and the metals content of sludge for the development of the CWA regulations pursuant to § 60.154(d)(3) through (5). Therefore, 60 days after the date of publication of this notice, paragraphs (d)(3) through (5) shall be deleted from § 60.154.

The EPA hereby publishes this amendment to Subpart O to delete paragraphs (d)(3) through (5) to eliminate duplicate and conflicting metal testing requirements for sewage sludge incinerators that are regulated under the Act and the CWA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective April 4, 1994 unless, within 30 days of publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publication of a further notice. That notice will withdraw the final action and begin a new rulemaking by proposing the action and establishing a comment period.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sewage treatment plants.

For the reason set out in the preamble, 40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301, of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

§ 60.154 [Amended]

2. In § 60.154, paragraphs (d) (3) through (5) are removed.

Dated: January 27, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–2437 Filed 2–2–94; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Parts 185 and 186

[FAP 3H5659/R2021; FRL–4738–3]

RIN 2070–AB78

Food/Feed Additive Regulations for Hexakis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes or increases tolerances for the combined residues of the miticide hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane in or on the food commodity citrus oil and the feed commodities dried citrus pulp, dried apple pomace, and raisin waste. The regulation to establish maximum permissible levels for residues of the miticide was requested in a petition submitted by E.I. Du Pont de Nemours & Co., Inc.

EFFECTIVE DATE: This regulation becomes effective February 3, 1994.

ADDRESSES: Written objections, identified by the document control number, [FAP 3H5659/R2021], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1993 (58 FR 54355), EPA issued a notice announcing that E.I. Du Pont de Nemours & Co., Inc., had submitted a food/feed additive petition (FAP 3H5659) to EPA proposing to amend 40 CFR parts 185 and 186, under section 409 of the FFDCA, 21 U.S.C. 348, by establishing a tolerance in or on citrus oil and increasing tolerances in or on dried citrus pulp, dried apple pomace, and raisin waste for the combined residues of hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane. The Agency has determined that citrus oil may be a human food, and a tolerance in or on citrus oil must be included in 40 CFR 185.3550.

Tolerances exist for residues in citrus fruits, apples, and grapes (40 CFR 180.362). Studies submitted in support of the reregistration of hexakis (2-methyl-2-phenylpropyl) distannoxane showed that it concentrates during the processing of these commodities. The Agency requested that Du Pont submit a food additive petition that proposed tolerances that would be adequate for the increased concentrations of residues.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought and capable of achieving its intended physical or technical effect. The toxicological data considered in support of the proposed tolerances include the following:

1. A subchronic rat feeding study (data requirements satisfied by the chronic rat study) with a no-observed-effect level (NOEL) of 50 parts per million (ppm) and a lowest-effect level (LEL) of 100 ppm, based on increased BUN.

2. A 21-day rabbit dermal toxicity study with systemic NOEL greater than 5 milligrams (mg)/kilogram (kg) of body weight/day and dermal NOEL of 0.05 mg/kg of body weight/day, based on erythema and edema.

3. A chronic rat feeding/carcinogenicity study with NOEL of 100 ppm (equivalent to 5 mg/kg of body weight/day) and LEL of 600 ppm (equivalent to 30 mg/kg of body weight/day), based on increased alkaline phosphatase and testes weight. Under the study conditions carcinogenic potential was not demonstrated.

4. A chronic dog feeding study with NOEL of 5 mg/kg of body weight/day and LEL of 15 mg/kg of body weight/day, based on vomiting and diarrhea.

5. A mouse carcinogenicity study with NOEL of 100 ppm (equivalent to 15 mg/kg of body weight/day) and LEL of 300 ppm (equivalent to 45 mg/kg of body weight/day) based on decreased body weights. Under the study conditions carcinogenic potential was not demonstrated.

6. A rat developmental toxicity study with maternal NOEL of 15 mg/kg of body weight/day and maternal LEL of 30 mg/kg of body weight/day, based on postimplantation loss and decreased body weight. The developmental NOEL was 30 mg/kg of body weight/day.

7. A rabbit developmental toxicity study with a maternal/developmental NOEL of 1 mg/kg of body weight/day and a maternal/developmental LEL of 5 mg/kg of body weight/day, based on slightly decreased maternal body weight/intrauterine mortality. Maternal death resulted at 10 mg/kg of body weight/day.

8. A two-generation rat reproduction study with maternal/reproductive NOEL of 75 ppm (5.2 mg/kg of body weight/day in males and 5.98 mg/kg of body weight/day in females) and maternal/reproductive LEL of 250 ppm (17.4 mg/kg of body weight/day in males and 20.3 mg/kg of body weight/day in females), based on decreased maternal body weight and food consumption and decreased pup body weight during lactation.

9. The Ames gene mutation assay was negative up to cytotoxic levels.

10. Several other mutagenicity studies that were all negative. These include a Chinese hamster ovary cell mutation assay, a human lymphocyte assay for chromosomal aberration, and an unscheduled DNA synthesis assay.

11. A general metabolism study in rats shows that bioaccumulation is low, with the highest levels found in the liver, heart, and kidneys. Most is excreted unchanged within 72 hours in the feces.

The reference dose (RfD) based on the two-generation rat reproduction study (NOEL of 5.2 mg/kg of body weight/day for reduced body weight and food consumption in both sexes of pups of the first and second generations) and using a 100-fold uncertainty factor is calculated to be 0.05 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.068104 mg/kg of body weight/day. The current action will not increase the TMRC, and no dietary risk exposure analysis was conducted. Published tolerances for meat and milk will cover any secondary residues that may result from use as feed items.

Adequate gas chromatographic analytical methods are available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. There are currently no actions pending against continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40

CFR 185.3550 and 186.3550 would protect the public health and use of the pesticide would be safe. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; the resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Environmental protection, Food additives, Feed additives, Pesticides and pests.

Dated: January 24, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b.In § 185.3550, by revising the table therein to read as follows:

§ 185.3550 Hexakis.

* * * * *

Food	Parts per million
Citrus oil	140
Prunes, dried	20.0
Raisins	20

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b.In § 186.3550, in paragraph (a) by revising the table therein to read as follows:

§ 186.3550 Hexakis (2-methyl-2-phenylpropyl)distannoxane.

(a) * * *

Commodity	Parts per million
Apple pomace, dried	100
Citrus pulp, dried	100
Grape pomace, dried	100
Raisin waste	80

* * * * *

[FR Doc. 94–2445 Filed 2–2–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–4833–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Monroe Township Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Monroe Township Landfill Superfund site in Middlesex County, New Jersey from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of New Jersey have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. John Osolin, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 747, New York, New York 10278, (212) 264–9301.

ADDRESSES: Comprehensive information on this site is available only at the following addresses:

Monroe Township Municipal Complex, Perrinville Road Jamesburg, NJ 08831, Phone: (908) 521–4400.

Jamesburg Public Library, 229 Gatzmer Road, Jamesburg, NJ 08831, Phone (908) 521–0440.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Monroe Township Landfill Site in Middlesex County, New Jersey.

A notice of itent to delete for this site was published December 2, 1993 (58 FR 63551). The closing date for comments on the notice of intent to delete was January 3, 1994. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund)–financed remedial actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste,

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 25, 1994.

William J. Muszynski,

Acting Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300-[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B-[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site "Monroe Township Landfill in Middlesex County, New Jersey" and by revising the total number of sites from 1,073 to read 1,072.

[FR Doc. 94–2441 Filed 2–2–94; 8:45 am]

BILLING CODE 6560–50–F

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1207 and 1249

[Ex Parte No. MC–206]

Revision to Accounting and Reporting Requirements for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is eliminating the Uniform System of Accounts for common and contract motor carriers of property. In addition, the Commission is revising the report form designations for class I and class II motor carriers of property and is changing the classification threshold levels for classes I, II, and III motor carriers. The intent of these changes is to reduce regulatory and accounting burdens for these carriers and to create a simplified report form for those carriers earning between $3 and $10 million in annual operating revenues. Use of Generally Accepted Accounting Principles (GAAP), in lieu of the Uniform System of Accounts, and simplified annual reports for class II carriers permit the Commission to carry out fully its regulatory oversight functions.

EFFECTIVE DATE: This action is effective January 1, 1994. It will take effect for the reporting year beginning January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 927–6187. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking instituting this proceeding was published in the **Federal Register** on July 28, 1992 at 57 FR 33314. Based on comments received in response to that notice, the Commission is revising the Code of Federal Regulations by eliminating 49 CFR part 1207 and modifying 49 CFR part 1249. Also, annual reports for motor carriers of property are being modified, with two annual report forms being designated; Form M–1 (essentially identical to the old Form M) for class I carriers, and a simplified Form M–2 for class II carriers. Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose of our regulation is to reduce regulatory burden for the motor carriers. The economic impact on small entities, if any, will be to reduce the cost of maintaining and preparing reports to the Commission, and is not likely to be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 1207

Motor carriers, Uniform System of Accounts.

49 CFR Part 1249

Motor carriers, Reporting and recordkeeping requirements.

Decided: December 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin. Chairman McDonald and Commissioner Phillips commented with separate expressions. Commissioner Philbin concurred in part and dissented in part with a separate expression. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1207 and 1249 of the Code of Federal Regulations are amended as follows:

PART 1207—[REMOVED]

1. Under the authority of 49 U.S.C. 10321, 10751, 11142, and 11145, and 5 U.S.C. 553, title 49, chapter X, part 1207 of the Code of Federal Regulations is removed.

PART 1249—REPORTS OF MOTOR CARRIERS

2. The authority citation for part 1249 continues to read as follows:

Authority: 49 U.S.C. 11142 and 11145 and 5 U.S.C. 553.

3. Section 1249.1 is revised to read as follows:

§ 1249.1 Annual and quarterly reports of motor carriers of property, motor carriers of household goods, and dual authority carriers.

(a) *Annual Report Forms M–1 and M–2.* All class I common and contract carriers of property, including household goods and dual authority motor carriers, shall file Motor Carrier Annual Report Form M–1. All class II common and contract carriers of property, including household goods and dual authority motor carriers, shall file Motor Carrier Annual Report Form M–2. The annual reports shall be filed on or before March 31 of the year following the year to which they relate. Class III motor carriers of property shall be exempt from filing any reports. For classification criteria, See § 1249.2.

(b) *Quarterly Report Form QFR.* All class I common motor carriers of property and class I household goods motor carriers shall complete and file motor carrier Quarterly Report Form QFR (Form QFR). The quarterly accounting periods shall end on March 31, June 30, September 30, and December 31. The quarterly reports shall be filed within 30 calendar days after the end of the reporting quarter.

(c) The quarterly and annual reports shall be filed in duplicate with the Office of Economics, Interstate Commerce Commission, Washington, DC 20423. Copies of these forms may be obtained from the Office of Economics.

4. Section 1249.2 is amended by revising paragraphs (a), (b)(1), (b)(4),

and (c) (including Note A) and by adding a new paragraph (b)(5) to read as follows:

§ 1249.2 Classification of carriers-motor carriers of property, household goods carriers, and dual property carriers.

(a) Common and contract motor carriers of property subject to the Interstate Commerce Act are grouped into the following three classes:

Class I. Carriers having annual carrier operating revenues (including interstate and intrastate) of $10 million or more after applying the revenue deflator formula in Note A.

Class I. Carriers having annual carrier operating revenues (including interstate and intrastate) of at least $3 million but less than $10 million after applying the revenue deflator formula in Note A.

Class III. Carriers having annual carrier operating revenues (including interstate and intrastate) of less than $3 million after applying the revenue deflator formula in Note A.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues (excluding revenues from private carriage, compensated intercorporate hauling, and leasing vehicles with drivers to private carriers) after applying the revenue deflator formula in Note A. Upward and downward classification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.

* * * * *

(4) Carriers shall notify the Commission of any change in classification and any change in annual operating revenues that causes them to exceed the class I limit by writing to the Office of Economics, Interstate Commerce Commission, Washington, DC 20423. In unusual or extraordinary extenuating circumstances, where the classification process will unduly burden the carrier, such as partial liquidation, or curtailment or elimination of contracted services, the carrier may request from the Commission a waiver or an exception from these regulations. This request shall be in writing, specifying the conditions justifying the waiver or exception. The Commission shall notify the carriers of any change in classification.

(5) Carriers not required to file an Annual Report (Form M–1 or Form M–2) may be required to file the Annual Carrier Classification Survey Form. All carriers will be notified of any classification changes.

(c) For classification purposes, the Commission shall publish in the **Federal Register** annually an index number which shall be used to adjust gross annual operating revenues. This index number (deflator) shall be based on the Producers Price Index of Finished Goods. Its intended use is to eliminate the effects of inflation from the classification process. See Note A that follows:

Note A: Each carrier's operating revenues will be deflated annually using the Producers Price Index (PPI) of Finished Goods before comparing those revenues with the dollar revenue limits prescribed in paragraph (a) of this section. The PPI is published monthly by the Bureau of Labor Statistics. The formula to be applied is as follows:

$$\text{Current year's annual operating revenue} \times \frac{\text{1994 average PPI}}{\text{Current year's average PPI}} = \text{Adjusted annual operating revenues}$$

[FR Doc. 94–2430 Filed 2–2–94; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 930816–4016; I.D. 071993D]

RIN 0648–AF49

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Department of the Navy (Navy), issues regulations to govern the unintentional take of a small number of marine mammals incidental to a wide variety of proposed Navy projects involving the underwater detonation of conventional explosives in the offshore waters of the Outer Sea Test Range (OSTR) of the Naval Air Warfare Center (NAWC), Pt. Mugu, Ventura County, CA, over the next 5 years. Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds as here, that such takes will have a negligible impact on the species and stocks and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy's proposed activities, such authorization is provided by the National Defense Authorization Act and is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

EFFECTIVE DATE: March 3, 1994 through March 3, 1999.

ADDRESSES: Copies of the Environmental Assessment and Biological Opinion may be obtained by writing to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, or by telephoning the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary to allow, upon request by U.S. citizens engaged in a specific activity (other than commercial fishing) in a specified geographical region, the incidental, but not intentional, taking of small numbers of marine mammals, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture or kill.

Permission may be granted for periods up to 5 years if the Secretary finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, the Secretary must prescribe

regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

In 1986, the MMPA and the Endangered Species Act (ESA) (16 U.S.C. 1531–1543) were amended to allow incidental takings of depleted, endangered, or threatened marine mammals. Before the 1986 amendments, section 101(a)(5) applied only to non-depleted marine mammals, and the more restrictive provisions of the MMPA prevailed, which meant that an incidental take of endangered or depleted marine mammals could not be allowed even if the anticipated take would result in only negligible impacts.

Summary of Request

On May 13, 1993, NMFS received an application from the Navy for a Letter of Authorization (LOA) under section 101(a)(5) of the MMPA and 50 CFR 228.6, that would allow the unintentional take of small numbers of pinnipeds and cetaceans for a period of 5 years, commencing February 1994, incidental to a wide variety of military projects involving the underwater detonation of conventional explosives in the offshore waters of the OSTR of the NAWC, off Pt. Mugu, Ventura County, CA, seaward of the Channel Islands. This application was made available for public review on June 7, 1993 (58 FR 31944). NMFS requested comments, information and suggestions concerning the request and the structure and content of the regulations governing the take. The comment period closed on July 7, 1993. The application was subsequently modified by letter on September 2, 1993 to request an incidental take for two additional species.

As the Navy describes its proposed activities under the "Live Fire" testing program mandated by the National Defense Authorization Act (10 U.S.C. 139), ships and critical components or systems constructed for the Navy must undergo shock tests prior to service with the fleet to determine the integrity of the structure and electronic systems that are vital to the overall function and performance of the vessel and its crew under wartime combat conditions. This is especially true when a new class of ship is constructed. The new ship must be subjected to a "near-miss" underwater explosion while its crew tracks airborne and waterborne targets in the area. These tests help the Navy identify weaknesses in the ship's design early in the construction of a new class of ship, which, when corrected, enhance the survivability of the ship, its systems, and most importantly, its crew. The design corrections and improvements are then applied to all follow-on ships of that class.

The shock trial is a complicated combat simulation that requires the participation of several Navy aircraft and ships. Their purpose is to challenge the shock trial ship's tracking and communications systems after the detonation. To ensure the safety of commercial aircraft and vessels, the Navy must conduct these trials in an area where they can maintain control of air and sea space while the trial is being conducted. In addition, the site must be close to the repair facilities, should the ship become disabled. Under normal conditions, for Navy ships homeported on the west coast, the designated site is the OSTR, which is under the jurisdiction of the NAWC. The Navy anticipates that on an annual basis, no more than 10 projects involving underwater explosions will be conducted under the requested LOA (Table 1).

The Navy has requested a take of four species of pinnipeds and 17 species (or species groups) of cetaceans by harassment, injury and death (Table 2). The proposed activities would occur in the Southern California Bight (SCB), an area with a potentially high density of marine mammals. Potential impacts to marine mammals include both lethal and non-lethal injuries, as well as physical and acoustic harassment. Injury or death may occur as a direct result of the explosive blast (concussion) itself. Injury may include damage to internal organs, as well as to the auditory system. Harassment of marine mammals may occur as a result of non-injurious physiological responses to both the explosion-generated shockwave, as well as to the acoustic signature of the detonation.

TABLE 1.—MAXIMUM ANTICIPATED ANNUAL UNDERWATER DETONATION REQUIREMENTS

Number of projects/number of detonations per project	Maximum project charge weight lb/(kg)	Total number of detonations
2/6	10,000/(4,536)	12
2/1	1,200/(544)	2
2/5	100/(45)	10
2/5	10/(4.5)	10
2/10	1/(0.45)	20
10 Projects		
		Total 54

Source: Naval Surface Warfare Center, Carderock Division, Underwater Explosions Research Department.

TABLE 2.—REQUESTED TAKE UNDER A LETTER OF AUTHORIZATION: ESTIMATED MAXIMUM ANNUAL INCIDENTAL TAKE OF MARINE MAMMALS ASSUMING MAXIMUM UNDERWATER DETONATION REQUIREMENTS

Incidental take	Lethal	Injury	Harassment
Pinnipeds:			
California Sea Lion	2	38	173
Harbor Seal	2	16	68
Northern Elephant Seal	9	158	724
Northern Fur Seal	2	13	57
Odontocetes:			
Common Dolphin	1	16	67
Striped Dolphin	0	2	5

TABLE 2.—REQUESTED TAKE UNDER A LETTER OF AUTHORIZATION: ESTIMATED MAXIMUM ANNUAL INCIDENTAL TAKE OF MARINE MAMMALS ASSUMING MAXIMUM UNDERWATER DETONATION REQUIREMENTS—Continued

Incidental take	Lethal	Injury	Harassment
Risso's Dolphin	0	1	2
Pacific White-Sided Dolphin	3	52	236
Northern Rt. Whale Dolphin	2	24	108
Dall's Porpoise	0	6	18
Bottlenose Dolphin	0	4	15
Killer Whale	0	0	1
Sperm Whale (e)	0	6	20
Beaked Whales	0	0	3
Mysticetes:			
Minke Whale	0	0	4
Blue Whale (e)	0	1	11
Fin Whale (e)	0	0	6
Sei Whale (e)	0	0	1
Humpback Whale (e)	0	0	4
Gray Whale	0	3	40
Right Whale (e)	0	0	1

(e) = endangered species.

The Navy describes in its application efforts that will be made to minimize project related impacts to marine mammals (see below—Measures to Reduce Impacts). The Navy strongly believes that impacts can be held to an acceptably low level by mandating conservative safety zones for marine mammal exclusion and by incorporating an active aerial survey monitoring effort in the program both prior to, and after, detonation of explosives. The Navy states that tests will not be conducted if marine mammals, sea turtles, fish schools, or seabirds are detected within the safety zone, or if weather and sea conditions preclude adequate aerial surveillance. Also, if post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods will be reviewed by the Navy and NMFS and appropriate changes will be made.

Proposed Rule

On October 14, 1993, under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*; NEPA), NMFS released for public comment an Environmental Assessment (EA) and on October 15, 1993, published proposed regulations (58 FR 53491) authorizing and governing the unintentional taking of a small number of pinnipeds and cetaceans incidental to the Navy's underwater explosives detonations program in the OSTR. Public meetings were held on November 8, 1993, in Long Beach, CA and on November 15, 1993, in Silver Spring, MD. The comment period closed on November 29, 1993.

Comments and Responses

During the 45-day comment period, NMFS received several hundred letters and photocopied form letters from the general public, all but 4 of which were in opposition either to the detonation of explosives in the SCB or to the proposed regulations. Most of these comments did not address the contents of the Navy's application, the proposed regulations, or the EA. Instead, the commenters stated their opposition to the Navy's proposed activities because there would be a loss of marine life; because they believed aerial surveys were inadequate; and because they believed there would be an adverse impact on pregnant gray whales. In addition, NMFS received approximately 75 letters or hearing statements within the comment period that substantially discussed the issues and science upon which the proposed regulations were based.

Concerns Relating to the MMPA

Comment: The majority of the letters received expressed opposition to the Navy's detonation of explosives off the Channel Islands and urged NMFS to deny it the authorization to conduct these tests.

Response: The Navy conducts ship shock tests under the authority of the National Defense Authorization Act. The Navy does not require NMFS authorization to conduct these tests. However, under the MMPA, the taking of marine mammals is prohibited unless authorized by exemption or permit. Since there is a possibility that marine mammals may be unintentionally taken incidental to the ship shock trials, the Navy applied to NMFS for a small take authorization under section 101(a)(5) of the MMPA. Thus, it is the taking of marine mammals incidental to the Navy's ship shock tests that NMFS is authorizing.

Comment: One commenter believed that section 101(a) of the MMPA, under which the Navy is seeking permission for an unintentional take, is not appropriate for the Navy's purposes, as it was written to allow for indigenous groups to fish for subsistence. Others believe the MMPA is to protect marine mammals and that no takings under a LOA should be authorized.

Response: NMFS does not agree. Section 101(a)(5) of the MMPA was enacted in 1981 specifically to provide a means to authorize incidental takes in connection with legitimate maritime activities other than commercial or subsistence fishing. Prior to 1981, these incidental takes were prohibited by the MMPA moratorium on taking and any such takings were subject to prosecution under the MMPA.

Negligible Impact/Small Take

Comment: Commenters stated that NMFS cannot make a finding of negligible impact unless the impact is small, and of little consequence. Also, if the potential effects would be significant, NMFS cannot make a finding of negligible impact.

Response: Under NMFS' regulatory definition (50 CFR 228.4), a negligible impact is an impact resulting from the specified activity that cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock of marine mammal through effects on annual rates of recruitment or survival. The 1986 amendments to the MMPA altered the previous standard for determining negligible impact. Prior to the 1986 amendments, the taking from the impact had to be "so small, unimportant, or of so little consequence as to warrant little or no attention." However, after the 1986 amendment,

NMFS adopted the definition of negligible impact set out in the Senate's Section-by-Section Analysis (132 Cong. Rec. S16305, October 15, 1986). Section 101(a)(5) of the MMPA clearly indicates that some level of adverse effects involving the take of depleted marine mammals can be authorized so long as the impact is negligible.

Comment: Several commenters stated that the taking of 1,917 marine mammals annually does not represent a "small number." Another commenter considered the requested take to not have a "negligible impact." This commenter and several others also state that an incidental take exceeding 9,600 marine mammals over the 5-year period is not small.

Response: As noted in the EA, because not all species of marine mammals would be expected to be found within the vicinity of a test site during any particular test, the take estimates should not be considered additive for the purposes of determining whether the incidental take is small. The MMPA requires NMFS to authorize incidental takes on a species/stock basis based upon the best scientific information available. Therefore, even though it is extremely unlikely that more than a few species/stocks would be present at any one time in the offshore waters of the SCB, authorizations must be made on a species basis.

In addition, because NMFS and the Navy cannot know in advance which of these species would be within the SCB at the time of a test, the Navy found it necessary to design its request as though all species/stocks recorded as inhabiting the offshore waters of the SCB would be within the safety zone, even though the probability of that happening is considered extremely remote.

For that reason, as noted in the EA, NMFS considers the taking request (*i.e.*, 1,917 marine mammals) to reflect a "worst-case scenario." This is also true for the total taking over 5 years; the statutory requirement is for a determination that the total taking (over the 5-year authorization period) would have a negligible impact (see previous response).

Comment: One commenter stated that section 101(a)(5) of the MMPA requires [regulations regarding] the protection of rookeries. This commenter also believes NMFS failed to consider impacts upon other marine species. For example, the commenter stated that the EA does not mention impacts upon the migratory routes of gray whales and other migratory species and that it fails to "pay particular attention" to these significant species.

Response: NMFS does not agree. The EA notes that the underwater explosives detonations will have no impacts on marine mammals that are ashore at the time of detonation; therefore, without information to the contrary, regulations are unnecessary to protect onshore rookeries. In addition, the best available scientific information indicates that the requested taking will have no more than a negligible impact on the populations of marine mammals inhabiting the waters of the SCB, their mating grounds, migratory routes and other areas of similar significance. The EA discusses fully the impacts on those marine species believed to frequent the test area, including gray whales, other marine mammals and other species. The EA indicated that no gray whales were sighted within Area 2 and NMFS therefore concluded that no gray whales will be killed and that only three would incur non-lethal injuries. For the same reasons the migratory routes of gray whales will be unaffected by the short-term impacts from the detonation itself. Moreover, gray whales are resilient to human activities and will reoccupy areas once the activity ceases (see 58 FR 3121, January 7, 1993), further limiting expected impacts.

Comment: One commenter stated that the MMPA requires NMFS to prescribe regulations that restrict, among other things, "the season or the period of time within which animals may be taken" and the "manner and locations in which animals may be taken."

Response: While the provisions of section 103 of the MMPA do not apply for small takes under section 101(a)(5), seasonal restrictions are viewed by NMFS as one method of reducing takes. However, there is no scientific evidence at this time to indicate that there is any one period of the year when marine mammals are not within the OSTR. Although population assessment research in the SCB, currently underway, will be reviewed to determine if seasonal restrictions would result in lower incidental takes, because the marine environment of the SCB is dynamic and significantly influenced by oceanographic factors such as El Niño, this might not be practical on a long-term basis. However, the Navy will be required to locate the areas within the OSTR that have the lowest numbers of marine mammals and to conduct its tests within those areas.

NMFS has specified "the manner and locations in which animals may be taken" in these regulations (see regulatory text below).

Depleted Species

Comment: Several commenters noted the number of species requested for taking that are either depleted under the MMPA or threatened or endangered under the ESA (and should not be taken).

Response: In 1986, both the MMPA and the ESA were amended to allow incidental takings of depleted, endangered, or threatened marine mammals. Before the 1986 amendments, section 101(a)(5) applied only to non-depleted marine mammals, which meant that an incidental take of endangered or depleted marine mammals could not be authorized even if the anticipated take would result in only negligible impacts. However, both the MMPA and ESA now specifically provide for authorization of such takes, so long as the requisite findings can be made. As required by the ESA, NMFS has consulted with the Navy under section 7 (refer to response under "Endangered Species Act Concerns" below for additional information on section 7 consultation). A copy of the Biological Opinion resulting from that consultation is available upon request (see **ADDRESSES**).

Incidental Take

Comment: One commenter opposed the project because, among other things, estimated takes presented by the Navy are calculated from models that may be based on invalid assumptions. The commenter continues that even though NMFS believes the takes will have a proportionally minor impact on the large local populations of marine mammals, hundreds, if not thousands, of animals will be harassed by the detonations, while a sizable number will potentially be injured and killed.

Response: The two assumptions that may not be valid were discussed fully in the application and the EA. These are (1) that species are distributed uniformly in space and time, and (2) that pinniped species are in the water all year. The first assumption is discussed in the following response and under "Population Assessment Methodology," below. The latter assumption is misleading because many of these animals will be on the beach for 1–3 months during breeding and/or molting cycles; use of this assumption (*i.e.*, that all pinnipeds are in the water all the time) leads to a higher incidental take estimate, not a lower one. The negligible impact determination under section 101(a)(5) of the MMPA was discussed above.

Comment: Two commenters were concerned that the distribution of

marine mammals was difficult to predict because marine mammals exhibit associative, or clumped distributions. This, one of the commenters believes, could cause the incidental take number to be lower or higher than requested.

Response: NMFS agrees. Those marine mammal species that tend towards group association could be subjected to a higher incidental take on a single detonation, provided their behavior also includes all individuals in the school diving at the same time, thereby making the entire pod or school invisible to observers. It is also just as likely that, because of grouping or clumping behavior, during the 4-week period for a ship shock trial, random distribution of the school(s) would mean that this species would not be within the safety zone at the time of testing, and therefore not subject to take. However, should the annual taking authorization for any species be reached, then any future takings would be considered to be in violation of the LOA, the implementing regulations and the MMPA.

Comment: On a related issue, one commenter questioned whether it was a "conservative approach" to estimate mysticete (baleen whales) abundance (from which incidental take estimates are calculated), by using "California-wide estimates and 'scaling' them to the focal area." This commenter also questioned the incidental take calculations for California sea lions, since the females and young apparently remain in the area year-round.

Response: NMFS believes the calculations for mysticete abundance is a conservative approach. As noted in the EA, during aerial surveys in the winter/spring period, blue whales were the only mysticete species observed within Area 2 (*i.e.*, the OSTR). Based upon this observation, an incidental take authorization for mysticetes should include only blue whales. However, because of the migratory nature of mysticetes, a conservative approach was taken, which was to request additional mysticete species based upon the method mentioned by the commenter.

While California sea lions are the most abundant pinniped species in the SCB, because they are more likely to remain closer to islands and the coastline, fewer are expected to be in the area of the test. Therefore, fewer animals are anticipated to be incidentally taken.

Comment: One commenter questioned the calculations for incidental take of northern fur seals because the EA stated that the species shared similar attributes with northern elephant seals.

Response: The similar attributes northern fur seals share with northern elephant seals for the purposes of calculating the effectiveness of mitigation only, were the extended diving capability and the likelihood for northern fur seals to remain in the area most of the year.

Comment: One commenter was concerned that takes by physical harassment is not defined, that harassment parameters are based upon tests on humans in an air environment, and the relationship between avoidance behavior caused by aircraft and that of the detonation. This commenter (and others) was also concerned that marine mammals would not be detectable from the air, making the incidental take tables suspect.

Response: The commenter is correct that a definition for physical harassment has not been provided and that human volunteers have been used for testing the effects of explosives in the water (not in the air as the commenter stated)[1] in order to determine the parameters for physical harassment. Physical harassment of cetaceans due to tactile "stings" from the shockwave accompanying detonations has been inferred from studies with humans. This inference seems plausible given studies on dolphin skin sensitivity where the authors[2,3] concluded that "the most sensitive areas of the dolphin skin (mouth, eyes, snout, melon and blowhole) are about as sensitive as the skin of human lips and fingers." Skin sensitivity on pinnipeds and large whales has not been tested. Therefore, until tests can be conducted to determine the overall sensitivity of the skin of marine mammals, NMFS and the Navy have made the assumption that both humans and marine mammals have similar tactile sensitivity in the water.

In another rulemaking, NMFS has proposed a new definition of "harass" (58 FR 53320, October 14, 1993) at 50 CFR 216.3. Harass is proposed to mean, under the definition of "take" in the MMPA, "an intentional or negligent act or omission that results in, an injury to a marine mammal, a disruption in the behavior that a marine mammal was exhibiting prior to the act or omission, or a significant effect on the normal behavioral patterns of a marine mammal, including, but not limited to, breeding, feeding, sheltering, or migration patterns." This definition, if implemented in that rulemaking, will apply also to these small take regulations.

As stated in the application, for reasons of safety, aircraft cannot be airborne at the time of detonation and will need to leave the area approximately 3 minutes prior to detonation. Therefore, "avoidance behavior" by marine mammals, unfortunately, will not be directly observable from the air. Harassment takes will be calculated indirectly as those animals detected within the 3-nm post-test search zone, but outside the area wherein the test is considered to have resulted in death or injury.

NMFS and the Navy recognize that some marine mammal species will be difficult to detect from the air and that some injurious and/or lethal takes may occur even with the mitigative measures being implemented to reduce takes. The ability of aerial observers to detect these species has been taken into account when calculating incidental take levels (refer to Table 14 and accompanying text in the EA; also see "Mitigation" responses below).

Comment: One commenter believed that it was unclear whether all marine mammals will be regarded as "may have been harassed" if they are found within the safety zone subsequent to a test. This commenter also wanted NMFS to clarify the relationship between danger, shock, and safety zones and to specify the size of the safety zone in the final rule.

Response: Marine mammal scientists will categorize marine mammals detected within a search area of approximately 3-nm radius of a 10,000-lb charge detonation according to whether they are: (1) deceased, or severely injured and likely to die; (2) "injured" but not likely to die; and (3) harassed. If the marine mammal is believed to have been within approximately 1 nm of the test site at the time of detonation, it will be listed as either dead or seriously injured; "injured, but not seriously, if outside 1 nm but within approximately 1¾ nm, and "harassed" if outside 1¾ nm but within the 3-nm search area. NMFS notes that counting all marine mammals

[1] The reference for human testing in the EA was in error. The correct citation is as follows: Christian, E.A. and J.B. Gaspin. 1973. Swimmer safe standoffs from underwater explosions. Navy Science Assistance Program Project No. PHP–11–73.

[2] Ridgway, S.H. and D.A. Carter. 1993. Features of dolphin skin with potential hydrodynamic importance. IEEE Engineering in Medicine and Biology: 83–88.

[3] Ridgway, S.H. and D.A. Carder. 1990. Tactile sensitivity, somatosensory responses, skin vibrations, and the skin surface ridges of the bottlenose dolphin, *Tursiops truncatus* pp 163–179 IN: Sensory Abilities of Cetaceans. J. Thomas and R. Kastelein (eds) Plenum Press, N.Y. 710 pp.

observed within 3 nm of a test site should account for all incidental takes, since outside the monitoring area, the 160 dB level for the onset of harassment takes will be found only at a significant depth. The LOA will specify the conditions for categorizing marine mammals, and, among other things, the size of the safety zone for each detonation weight. The final rule has been written to clarify terms.

Comment: One commenter noted that provision is made in the proposed regulations for altering the test procedure if marine mammal fatalities or injuries are detected. The commenter feels that if the consensus among marine biologists is that harassment occurs beyond the bounds of the safety zone * * *, this should also be justification for altering the test procedure.

Response: Theoretically, physical and acoustic harassment may occur outside the 2-nm safety zone (refer to the Navy application for information). However, because of shot geometries, the amount of "safe water" at the water surface is closer to the detonation point than the perimeter of the safety zone. For this reason, NMFS believes that the 3-nm post-test survey zone will include all marine mammals "harassed" by the shot. NMFS will continue to monitor ship shock tests to determine whether modifications to the procedure, the regulations or the monitoring program will result in a decrease in marine mammal take, including takes by harassment.

Comment: One commenter noted that the application presents test data versus model predictions for lung injury (Table 7) and because marine mammals vary greatly in size and volume of air spaces, fat content, and other things, fixed models are problematic in describing lethal or injurious effects to marine mammals.

Response: Absent data from experimental testing on live marine mammals (or other proxy animals) for the larger explosive charges, the model predictions are the best scientific data available and have been used by NMFS and the Navy for their calculations of incidental take. However, it should be noted that figures 11 through 15 in the application show the calculated range for the onset of slight lung injury as a function of both the marine mammal weight and the explosive charge weight. Figure 11 shows that the larger the mammal, the closer to the detonation site the animal needed to be in order to incur injury. The Navy used a marine mammal weighing 110 lb (50 kilograms (kg)) to calculate the safety range necessary to preclude injury to marine mammals.

Comment: The low frequency (below 300 Hz) of the detonation acoustic signal has been determined as being too low to harass any odontocetes (i.e., toothed whales). The commenter stated that only limited data are available on the effect of low frequency sound on odontocetes, and because the data available are for one or two species (to the commenter's knowledge), can NMFS therefore make such a sweeping assumption?

Response: The best scientific information available indicates that odontocete cetaceans cannot hear well in the frequencies emitted by the explosive detonation. Additional evidence indicates that they also may not be able to hear the pulse generated from underwater detonations of even the largest charges because it is very brief (ca. 0.05 sec). However, because odontocetes and pinnipeds are considered to be "taken" by physical harassment already, whether they also hear (and are thereby acoustically harassed) the explosion would not add significantly to the take estimates.

Comment: One commenter wanted to know how many Navy ships and planes would be in the area at the time of detonation and afterwards and whether this activity might affect marine mammals, seabirds, turtles, fish, and other marine life.

Response: The number of Navy vessels and aircraft that would be involved in the exercise will depend upon their specific requirements for the ship shock trial. The effect of these vessels on marine life, including marine mammals, would be expected to be negligible and likely no more intrusive than that caused by commercial and other vessels using the nearby Route 2 ship traffic lane into Los Angeles/Long Beach (approximately 4.6 percent of the approximately 19,800 round trips annually by non-commercial fishing marine vessels into Los Angeles/Long Beach use Route 2).

There may be some inadvertent harassment of marine mammals by marine mammal surveillance aircraft during the various surveys for mammal-free areas for the detonation site. However, because these search efforts are under the direction and control of NMFS Southwest Fisheries Science Center (SWFSC) and are for the purpose of avoiding injury or death to marine mammals, this activity is being covered under their scientific research permit (Permit Number 873; P77#50). In addition, there might be some harassment takes during the post-survey monitoring and recovery efforts. This latter program is authorized by the regulations (50 CFR 228.55(d)(2)) and does not require a separate permit under the MMPA.

Comment: One commenter wanted the Navy to recalculate its incidental take request by using the upper 95th percentile of the population abundance estimates instead of the mean of those estimates. This, the commenter believes, would avoid the possibility of the Navy exceeding its authorized take limits and needing to cease operations in order to request the additional takes.

Response: Such an amendment to the Navy's application would inordinately delay the scheduled ship shock trial. In addition, because of the very conservative approach to estimating the number of incidental takes, it is considered extremely unlikely that explosives detonations in the OSTR will result in incidental take levels approaching the requested level.

Scientific Evidence

Comment: Commenters stated that NMFS did not use the best available scientific evidence available and that the data used were dated because they were over a decade old. Two commenters referred to "recent scientific evidence" showing that sound pressure waves seriously impact marine life.

Response: NMFS uses both the MMPA and the ESA standard of "the best available scientific and commercial data" to determine the impacts of activities on marine mammals. Although NMFS would like to have more baseline data on marine mammals within the SCB and more information on the effects of large-charge detonations on marine life, in particular on marine mammals, NMFS based its decision on the best information available, including NMFS marine mammal assessment surveys conducted in 1991 and 1992 and Defense Department research on the effects of explosions on marine life. NMFS is not aware of any more recent scientific evidence that would be contrary to its findings and two commenters did not provide citations or references to any new information. Also, without knowledge of scientific evidence contrary to research used in its determination, NMFS is confident that it used the best scientific and commercial data available in making its determination. However, monitoring is a requirement of the regulations and for a continuation of the LOA. The results from the monitoring will be used to verify (or refute) the findings made by NMFS, and if new evidence or data indicate that the impact on marine mammals is more than negligible, NMFS will reassess its findings and take

appropriate action as mandated by section 101(a)(5)(B)(ii) of the MMPA.

Comment: The EA, upon which the proposed regulations rely, fails to meet the standards mandated by the MMPA because NMFS failed not only in obtaining the best scientific evidence available, but failed in using even the limited evidence available as a basis for a reasoned conclusion. For instance, the Navy has indicated to NMFS that tests will not be conducted if marine mammals are detected within the testing zone * * * and NMFS concluded * * * that such efforts will minimize impacts to marine mammals, despite knowing that many marine mammals will not be visible by aerial survey. The commenter continues that the Navy, given its years of experience under the seas, should be able to detect marine mammals.

Response: NMFS used the best scientific information available in making its assessments and determinations (see previous response). As stated in the EA, the evidence indicates that some marine mammal species may not be observed by aerial surveillance during pre-test overflights (because they are submerged at the time). Since detonation of the explosive charge will not take place if even a single marine mammal (or sea turtle, fish school or seabird flock) is observed within the safety zone, it is the possibility that some marine mammals would be missed during pre-test surveys which makes a small take authorization necessary. The scientific basis for assessing the likelihood of marine mammals being taken was fully discussed and documented in both the EA and the Navy application.

For a response on the Navy's ability to detect marine mammals, refer to the responses related to "Monitoring" below.

Comment: One commenter was concerned because the information used by NMFS in making its finding of negligible impact was based on theoretical calculations and not on actual tests.

Response: NMFS shares the concern of the commenter, but obviously, conducting tests on the effects of explosives on live marine mammals would be controversial and an authorization may be difficult for a scientific research applicant to obtain under the MMPA. For that reason, the Navy bases its impact assessments on theoretical calculations, supported by test data using small charges on alternative test animals. NMFS will closely monitor ship shock tests and review the reports required under these regulations and the LOA to determine whether the basis for the finding of negligible impact continues to exist. If a negligible finding can no longer be made, NMFS is required under sections 101(a)(5) (B) and (C) of the MMPA to withdraw or suspend the authorization to take marine mammals.

Surveys

Comment: Several commenters criticized the survey effort claiming that some experts consider 800 ft (266 m) to be too high for aerial surveys to observe marine mammals and that vessel surveys are potentially an unnecessary use of funds. One commenter wants to see the survey effort placed in context with the surrounding area.

Response: The aerial and vessel surveys were conducted by NMFS as part of its marine mammal assessment program under section 114 of the MMPA. Since these surveys were for the entire California coast and not restricted to the SCB, they were "in context." The data from these surveys were used by the Navy in its application. The survey design methodology uses an aircraft height of 700 to 800 ft (233 to 266 m) which is the height commonly used for marine mammal surveys.[4] Without evidence to the contrary, NMFS continues to believe that a height of 700 to 800 ft (233 to 266 m) is appropriate, as lower altitudes may result in missed animals due to the reduced time for observation from being closer to the water (higher ground speed).

Surveys to determine areas of low marine mammal abundance and pre- and post-detonation surveys do not need to extend beyond the OSTR. To survey greater distances than necessary would reduce the amount of time available to survey the impact area.

Population Assessment Methodology

Comment: One commenter considered NMFS' determination of impacts upon affected species to be "arbitrary and capricious" because NMFS "admitted" that the density of many species is unknown. Another believed the impact of the action is unknown because the density of the species in the area is unknown. The first commenter also stated that density studies are necessary before NMFS may proceed.

Response: It is unclear how these commenters arrived at this conclusion, as Table 14 in the EA gives the calculated density for each species in the SCB. Population estimates for the SCB were made from aerial and vessel surveys of the California coast in 1991 and 1992. Additional surveys were conducted in 1993 in the SCB and are currently being analyzed. However, marine mammal density is not static, it can vary due to school size, environmental conditions, migratory patterns and food source distribution, making it difficult to predict where in space or time an individual or a group of animals will occur. For those reasons, when calculating the number of animals expected in the test range, an assumption is made that distribution is uniform, which it is not. This has been discussed previously in a related comment under "Incidental Take" above. (Also, refer to similar comment under "National Environmental Policy Act Concerns" below). The assumptions specific to each marine mammal group is given in the EA.

Comment: One commenter was concerned that 1992/93 was an anomalous year due to El Niño and its effects upon the distribution and abundance of marine mammal species.

Response: Aerial and ship marine mammal surveys, upon which incidental take estimates are based, were conducted in 1991 and 1992. Additional survey work to determine areas of low marine mammal abundance for the ship shock tests were conducted during 1993. Distribution and abundance estimates from these studies, in general, agree with previous studies, with some exceptions, which were noted and fully discussed in the EA.

Mitigation and Monitoring

Comment: Many commenters stated that the proposed mitigation measures were inadequate. Many were concerned that aerial surveys would be unsuccessful in detecting marine mammals because they spend 90 percent of the time submerged.

Response: NMFS believes the mitigation measures required by the rule are adequate to protect marine mammals and reduce incidental take to the lowest level practicable. While aerial surveys will have difficulty detecting those marine mammal species that spend a significant portion of the time submerged, the regulations prohibit detonations if even a single marine mammal (or sea turtle, sea bird flock or fish school) is sighted within the safety zone by aerial survey. The small take authorization is for the unintentional take of marine mammals not sighted by aerial survey. Refer to the EA for a detailed discussion on how the small take estimates were made.

Comment: Some commenters suggested additional (or alternative) methods for detecting marine mammals

[4] See, for example, Leatherwood, S., I.T. Show, Jr., R.R. Reeves and M.B. Wright. 1982. Proposed modifications of transect models to estimate population size from aircraft with obstructed downward visibility. Rept. Int. Whal. Commn. 32:577–9.

during surveys, especially for deep-diving species, such as sonobuoys and hydrophone arrays. One commenter also suggested, if possible, using sound to cause some species to surface so they can be seen or to leave or avoid the test area.

Response: Although the Navy proposes to employ hydrophone arrays at several locations to record the impulse pressure wave resulting from the ship shock trial, these hydrophones will not be capable of recording marine mammal vocalizations. Also, because the shock trial is a mobile exercise, and because it would be necessary to triangulate on vocalizing marine mammals in order to determine whether or not they are within the vicinity of the shock trial, this suggestion is not viewed as being practicable at this time.

The practicality of using "scare charges" (smaller explosive charges) or high decibel noise devices in order to scare marine mammals from the area of testing is equivocal at best. There is insufficient evidence to give assurance that marine mammals would leave the area and not be attracted to the site.

Comment: One commenter considered the 2-nm safety zone to be inadequate, believing that injury or harassment could occur at distances greater than 2 nm. The commenter also considered "Area 1" and "Area 2" to be artificial and anthropocentric. Other commenters were concerned that the effects could extend to great distances, for example physical harassment could occur 22,000 ft (6,706 m) from the detonation and acoustic harassment up to 121,000 ft (37,039 m) for a 10,000-lb (4,536 kg) charge. One commenter was concerned that these distances would cause an impact very close to the nearest islands.

Response: NMFS considers the 2-nm safety zone to be adequate to protect marine mammals from injury and death. As indicated in the EA (Table 12) for the 10,000-lb (4,536 kg) charge, the 2-nm (i.e., 12,150-ft (3,704 m)) safety zone is greater than the calculated limit for minimum eardrum injury (9,400 ft (2,865 m)).

As noted in Table 12, while physical harassment could occur up to 22,000 ft (4.2 nm) from the detonation, as indicated in the application, the safety zone exceeds the maximum horizontal ranges for physical harassment for mammals at the shallow depths; however, for mammals at depths greater than 200 ft (67 m), there is a possibility for physical harassment beyond the safety zones, since the surface reflected relief wave arrives later at these depths for these ranges. Refer to the application for a detailed description of sound source levels in the marine environment.

For acoustic harassment, based upon the best available information, pinnipeds and odontocetes are unlikely to be subjected to acoustic harassment due to the very low frequency and extreme brevity of the sound associated with detonations. For mysticetes, the range for the 160 dB re 1 uPa (the level above which avoidance behavior is believed to occur) increases from 86,000 ft (14.2 nm) at a water depth of 50 ft (15 m) to 121,520 ft (20 nm) at a depth of 1,000 ft (305 m). Therefore, while some mysticete cetaceans may be acoustically harassed if at these depths, it is unlikely that any impacts will accrue to the coastal zone of the SCB because of the distance from the detonation site, the shallow depths of the coastal zone and the masking effect of ambient noise (*e.g.*, surf, wind, rain and/or distant shipping and other industrial activity noises).

Area 1 and Area 2, while artificial, were used only for estimating the abundance of marine mammals within the test area. Refer to the EA and/or the Navy application for additional description of the methodology used in determining abundance.

Comment: One commenter was concerned because there was no method indicated that would assess the extent and/or severity of acoustic (and other) injury incurred by marine mammals in the test area. The commenter states that these types of injury would be very difficult to assess from aerial or shipboard reconnaissance. For many of the mammals that would be affected, acoustic injury could have a profound impact on their ability to navigate and on their ability to interact with other animals.

Because of the possibility that acoustic injury could have significant impact, the commenter believes that there should be a more comprehensive plan for assessing the extent of acoustic injury and its impact on marine life as a result of this project.

Response: While generally agreeing with the comment, NMFS disagrees that a more comprehensive plan is necessary. Three types of injuries have been identified for marine mammals from ship shock trials. These are: (1) Lung injuries; (2) gastro intestinal injuries; and (3) eardrum (rupture) injuries. As determining the type and extent of these injuries would require capturing and either sacrificing the animal or subjecting the animal to long-term captive observation, and as both of these are unacceptable to NMFS unless the animal requires euthanization or immediate veterinary care, the Navy and NMFS will utilize less intrusive methods for determining incidental takes, including, but not necessarily limited to, photo-identifying "injured" marine mammals, and necropsies on stranded and other dead marine mammals to determine the probable cause of death and its relationship if any, to the trial. However, because even minimal eardrum injury is not expected to occur beyond 9,400 ft (1.5 nm), few marine mammals are expected to be impacted.

Comment: Commenters were concerned that the post-test surveys would not be able to detect all marine mammals (and fish) that are killed or seriously injured during ship shock trials, because animals might sink and not rise immediately to the surface. One commenter suggested post-detonation surveys continue for up to 1 week after the trial to search for these animals and to assess oceanographic current patterns to determine search effort. One commenter recommended that monitoring should be conducted over the long-term to document whether there is a chronic effect from the ship shock trials.

Response: NMFS agrees with these concerns, noting that a ship shock trial is a series of one to six (usually four) charges set off approximately one week apart. Therefore, a project and its monitoring program are likely to continue for up to six weeks between the first and last detonations. As explained in detail in the application (refer particularly to Figure 31), post-detonation surveys will begin approximately 30 minutes after each detonation. The survey effort will be repeated for each scheduled test until the shock trial is completed. The 48-hour advance pre-detonation marine mammal search survey will also serve as a final post-test follow-up survey for the previous test. A post-trial follow-up survey will be conducted approximately 1 week after the last test of the shock trial. In addition, the Marine Animal Recovery Team (MART) will be required to make every effort to document and examine those injured or dead marine mammals (if any) that are moved outside the test area by currents subsequent to a detonation. Finally, NMFS will monitor the stranding records for evidence that the ship shock trials are having more than a negligible impact on the marine mammal species and stocks in the SCB. The monitoring requirements for marine mammals will be specified in the LOA.

Although deceased marine mammals that sink will return to the surface within a few days of the detonation, it is unlikely that subsurface fish species would be detectable during post-test

monitoring and would likely be consumed by predators before surfacing. Sea turtles will also be difficult to detect once they sink.

Comment: Several commenters noted that the course of action was unclear, should a marine mammal be lethally taken.

Response: As the NMFS and the Navy expect few marine mammals to be killed during ship shock trials, each lethal take will be reviewed by NMFS scientists, MART personnel and the U.S. Navy to determine whether similar takes can be prevented in future tests. However, until ship shock tests take place and incidental lethal takes are documented, the actions NMFS and the Navy will take to reduce potential future lethal takes cannot be determined.

Comment: One commenter, while approving of NMFS' participation in post-test monitoring, recommended the final rule prohibit Naval reconnaissance of the test area, by sea or air, until after the reconnaissance by NMFS and retrieval by MART are completed.

Response: NMFS believes that this recommendation is neither practical nor warranted. The ship shock test is a complicated combat simulation that requires the participation of several Navy aircraft and ships. Therefore, the Navy cannot be prohibited from the test area, although it will likely have moved away from the detonation site by the time the post-test monitoring begins. Moreover, it is not entirely clear from the comment the purpose behind the requested prohibition, since the Navy will have an authorization for incidentally taking marine mammals during the exercise.

Endangered Species Act Concerns

Comment: The Navy violated the ESA by its failure to request a "biological opinion" detailing how the proposed detonation will affect endangered and threatened species. Several commenters believe that the proposed action should be denied because of this noncompliance. One commenter wanted to review and comment on the biological opinion.

Response: The preamble to the proposed rule noted that NMFS will be consulting with the Navy under section 7 of the ESA. The Navy is required to consult under section 7, and it generally is NMFS policy that formal consultation should be initiated at the earliest opportunity, in this case, since NMFS would be conducting formal consultation with both the Navy and itself (because the proposed issuance of a small take authorization is a Federal action), consultation was not initiated until after the proposed rule was issued on October 15, 1993. That consultation has been completed. A copy of NMFS' Biological Opinion and Incidental Take Statement is available upon request (see ADDRESSES). As noted previously, the requirements for mitigation, as well as monitoring, in conjunction with other existing regulations, are expected to provide adequate protection for listed species.

Although biological opinions issued under section 7 are available to the general public, they are not subject to review and comment.

National Environmental Policy Act (NEPA) Concerns

Comment: Several commenters at both the public meetings and in written comments believed that NMFS should prepare a draft environmental impact statement (DEIS) rather than an EA before it issues final regulations.

Response: Since NMFS must analyze a request for a small take authorization to determine whether the proposed marine mammal taking has only a negligible impact on species or stocks of marine mammals and does not have an unmitigable adverse impact on the availability for subsistence uses, NMFS assessed many of the potential environmental impacts that are also assessed under NEPA. Through this process, and during preparation of an EA, NMFS determined that the proposed activity (*i.e.*, issuance of regulations and an LOA) will not significantly affect the quality of the human environment and made a "finding of no significant impact." If an EA results in this finding, no additional documents are required by NEPA. The detonation of the explosives by itself does not necessarily invoke a "significant" impact finding. However, the Navy must also satisfy NEPA prior to undertaking any action that might impact the human environment.

The following 8 comments relate specifically to NEPA concerns raised by one or two commenters (but may also have been mentioned by others). One of these commenters submitted detailed comments to support its position that the proposed action will have a "significant" impact under NEPA and therefore requires a DEIS. However, NMFS does not concur with the commenter's interpretation that CEQ regulations state that certain factors (which follow and are evaluated below) are "critical" for making a determination relating to the "intensity" of the action. CEQ regulations (40 CFR 1508.27) require these factors "to be considered" in evaluating the intensity of the proposed action. As discussed below, these factors were given consideration by NMFS.

Comment: Adverse impacts far outweigh any beneficial impacts (40 CFR 1508.27(b)(1)).

Response: According to the Navy, ship shock testing, while possibly having a short-term impact on the marine environment, also has a beneficial impact in ensuring the health and safety of seamen onboard the Nation's naval vessels. In its EA, NMFS found that the proposed activity (*i.e.*, issuance of regulations and a LOA) will not significantly affect the quality of the human environment and thus made a "finding of no significant impact."

Comment: The EA fails to address the degree to which the proposed action affects the public health and welfare. The commenter was concerned that, because a variety of potentially harmful compounds from the explosive could persist in surface pools for 30–60 minutes after detonation, this could result in subtle and long-term effects on marine mammals and birds (40 CFR 1508.27(b)(2)).

Response: NMFS disagrees. First, as stated in the EA (page 47), and as provided for under CEQ regulations (40 CFR 1502.21), NMFS has incorporated by reference the Navy EA written in 1990[5]. While identifying that document more clearly on that page may have improved the EA, the Navy EA was cited in the references. That document described in some detail the potential impacts on the human environment from explosives detonation. NMFS incorporated this information by reference but did not include discussion in its EA, that part of the Navy EA that discussed impacts on humans, because NMFS was of the opinion that the proposed small take authorization would not have an impact on public health or safety, and was therefore not relevant. However, because NMFS' proposed action may affect the environment that marine mammals inhabit, NMFS' EA does note that while 100 percent of the solid material and approximately 10 percent of the gases would be contained in the water pool created by the explosion (an area 10.8 X 10^7 ft^3 (3.06 X 10^6 m^3) for the 10,000 lb (4,536 kg) charge), the concentrations shown are below the levels considered harmful for fish and would not be expected to pose a threat to marine mammals after the stabilization times (53 minutes for 10,000 lb (4,536 kg) charge). The commenter's concern

[5] Naval Air Station, Pt. Mugu. 1990. Environmental Assessment for the Ship Hardening Program Tests to be Conducted on the Sea Test Range of the Pacific Missile Test Center, Ventura County, California.

however, is apparently on the impact to marine mammals and other marine life entering the surface pool before stabilization (*i.e.*, less than 53 minutes after detonation). Assuming these marine mammals were not within the 2-nm safety zone at the time of detonation, NMFS believes that the likelihood of this occurring is remote and if it happens there will be little or no effect, either singly or cumulatively, from the chemical components of the surface pool. As noted in the Navy EA, the chemical components (primarily composed of gases) would be thoroughly dispersed, with no possible buildup or cumulative effect, and become indistinguishable from other trace level constituents of the ocean shortly after detonation. The only solid particles are carbon and aluminum oxide. Carbon particles will tend to float on the surface and move with the pool while aluminum oxide particles, a naturally occurring component of seawater due to the weathering of rock, will probably settle to the bottom over a large area.

Post-test monitoring will observe and record any incidents of marine life entering the surface water pool, which will be dye-marked and visible from the air.

Comment: The testing site is located near an ecologically critical area (with unique characteristics)(40 CFR 1508.27(b)(3)).

Response: While the SCB can be considered an ecologically important area that contains "unique characteristics" including the Channel Islands Marine Sanctuary, because the area surrounding the detonation site will be in an area of low marine mammal abundance (and presumably other marine life); off the continental shelf (on or near the Patton Escarpment); approximately 50 nm from the nearest boundary of the sanctuary; and, although in productive waters, not in a major upwelling (nutrient-rich) or commercial fishing area, NMFS believes that the small take authorization will not have an impact on the SCB and its resources (including the Channel Islands National Marine Sanctuary) significant enough to require a DEIS.

Comment: The effects of the proposed detonations are "highly controversial" and involve uncertain, unique and unknown risks to the environment (40 CFR 1508.27(b) (4) and (5)).

Response: As required by CEQ regulations, NMFS considered "the degree to which the effects (of the proposed action) on the quality of the human environment are likely to be highly controversial" as a factor in determining whether the intensity of the proposed action would make it "significant." Because NMFS' review of the best available scientific information led to the conclusion in the EA that the proposed detonations will have a negligible impact on marine mammals and other marine resources, the fact that the commenters did not provide any new or contradictory scientific information regarding such impacts reaffirms NMFS' conclusion that there is no real scientifically-based controversy about the effects of the proposed action sufficient to change NMFS' conclusion that the proposed action would not have a significant impact on the human environment such that preparation of a DEIS would be warranted.

While the Navy's ship shock testing may be opposed by many members of the public, much of that objection is due to philosophical differences of opinion rather than objective scientifically- or factually-based controversy over what will be the effects of such testing on the environment. NMFS believes that the rulemaking shows that the issuance of a small take authorization to the Navy would not have effects (intensity) that are "highly uncertain or involve unique or unknown risks" significant enough to require a DEIS. In the EA and in the Navy's small take application, the level of scientific uncertainty has been substantially lessened by incorporating scientifically acceptable environmental prediction methods as necessary. In addition, mitigation and monitoring measures incorporated into the LOA and regulations substantially moderate potential impacts from ship shock testing.

The commenter states that "among those who are criticizing the proposed detonations are knowledgeable scientists with years of experience studying affected species." However, other than those scientists submitting comments that have been addressed in this section, because independent scientists neither submitted significant comments addressing the science upon which the small take authorization is based when information was requested during the June 1993 comment period, nor as a result of the EA and proposed rule, NMFS is unaware of either the reasons for their purported criticism or contrary scientific evidence to support their position.

Comment: The same commenter, noted that by granting the Navy's permit application, NMFS will establish a (dangerous) precedent for future action with significant effects. The commenter was concerned that future applications would require no more than was done for this application even though mitigation efforts are highly questionable as to effectiveness and that there would be no incentive for the Navy to develop more accurate detection methods (40 CFR 1508.27(b)(6)).

Response: NMFS disagrees with this assessment. The mitigation measures (survey for low animal abundance areas, aerial surveys, go/no-go determination, post-detonation surveys etc.) required under these regulations are considered adequate to detect marine mammals and other marine life and limit incidental takings to the lowest possible number. In addition, the ship shock test small take authorization will be reviewed at least annually to make a determination that the taking continues to comply with section 101(a)(5) of the MMPA. While the mitigation measures in these regulations may seem "questionable" to some commenters, practical alternative methods for detecting marine mammals have not been recommended (see response under "Mitigation"). Moreover, future Navy applications for a small take authorization under the MMPA will be judged on the adequacy of the documentation submitted, not on previous actions, such as this one.

Comment: Certain impacts, while insignificant individually, are significant when considered cumulatively (40 CFR 1508.27(b)(7)). Another commenter suggested that cumulative impacts include chronic stress, changes in migration and/or foraging patterns, impact on particular age/size classes among others.

Response: NMFS did not review the proposed action as a 1-year authorization; it reviewed it as a 5-year authorization period, and therefore evaluated the cumulative impacts of the proposed activity over 5 years. As stated in the EA, the cumulative impact on marine mammals from ship shock tests over the 5-year authorization period of the regulations will be negligible.

Also, ship shock testing (in combination with other military explosives detonation projects) would not have a significant impact, either singly or cumulatively, on the marine environment of the SCB over the 5-year authorization period. The infrequency of the large-charge tests and the minimal impact of the small charges are two additional reasons for this determination.

Comment: The EA fails to adequately address the degree to which the Navy's action will adversely affect ten endangered/threatened species and their respective habitats (40 CFR 1508.27(b)(9)).

Response: NMFS does not concur. While ship shock testing may result in the non-lethal injury or harassment of

endangered marine mammals, this level of incidental take will not result in the mortality of listed marine mammals or result in jeopardizing the continued existence of these species. (Refer to the Biological Opinion for additional information). The estimated numbers of incidental takes are given and assessed in the EA. Although sperm whales, because of their abundance and deep-diving behavior, may be subject to a "high incidental take," (*i.e.*, six non-lethal injuries and 20 harassment takes if they are in the area on each and every test) there will not be a "high incidental killing" of sperm whales as the commenter states. With a California population size of 857 and a North Pacific population size of 930,000, these takes are considered "small" and will not be a significant impact on the stock. Moreover, the OSTR has not been designated "critical habitat" for any listed species. Individual injured animals would be expected to recover.

There is less information available on sea turtles in the SCB than marine mammals, as discussed in the EA. Due to the less effective ability of aerial overflights to detect some species of sea turtles, the Navy admits that some sea turtles may be injured or possibly killed during explosives detonation. However, based upon mortalities observed in other tests in an area of presumably higher sea turtle abundance than the SCB, and because recent research (cited in the EA) indicates that sea turtles are less susceptible to injury from explosives than marine mammals, few sea turtles are likely to be killed or seriously injured. Although post-test monitoring efforts may not be totally effective in determining impacts to sea turtles, the monitoring program will try to determine whether sea turtles are in fact incidentally killed and, if so, whether practical modifications are available to improve detection and/or to reduce impacts. Also, because of the great depth of the water at the test location, several species, such as coastal inhabiting, bottom-feeding and coral-feeding species, would be expected to be uncommon or rarely seen in the area. (Contrary to one commenter's observation, even though sea turtle species are listed as endangered or threatened, some species are sufficiently abundant in certain areas and times to be considered more than "rare," (*e.g.*, offshore nesting beaches along the west coasts of Mexico and Costa Rica)). For additional information, refer to the Biological Opinion mentioned previously.

Comment: The proposed regulations violate the ESA and the MMPA (40 CFR 1508.27(b)(10)). The commenter states that the Navy violated the ESA by its failure to request a "biological opinion" detailing how the proposed detonation will affect endangered and threatened species and NMFS violated the MMPA by not using "the best scientific evidence available."

Response: These issues were addressed previously under "Endangered Species Act Concerns" and "Scientific Evidence."

Comment: Several commenters stated that NMFS did not give the proposal and the EA adequate circulation, or opportunity for public participation. Several commenters wanted additional hearings along the coast of California. One commenter believed that the West Coast hearing made a mockery of public involvement because it was "80 miles from the affected area." This same commenter and another commenter stated that "NEPA and the MMPA require public participation and hearings." One commenter also noted that "the marine scientific community should have provided a greater role in assessing the impacts of the proposed action." Another listed the names of several scientists, who were unaware of the public hearings or that the Navy proposed to begin ship shock trials in February 1994.

Response: NMFS disagrees with statements that the proposal was not given adequate circulation. The application of the Navy for a small incidental take was made available on June 7, 1993 (58 FR 31944), with a 30-day public comment period. In addition, NOAA issued a press release at that time, which generated several newspaper articles and hundreds of responses. The proposed rule was published in the **Federal Register** and both the rule and the EA were distributed to government, environmental and commercial fishing organizations and to those submitting significant comments during the June 1993 comment period. In addition, as required by section 101(a)(5) of the MMPA, public notice of the proposed activity and corresponding public meetings were placed in several southern California newspapers. A press release noting the proposed rule and the meeting times and locations was also issued. NMFS believes that it has complied with both the spirit and the letter of NEPA, NOAA Directives implementing NEPA, and the MMPA in regard to public participation.

The location for the Long Beach public meeting was chosen because it was considered central to the affected area (i.e., the SCB). Those unable to attend the meeting were invited to submit written comments.

It is not possible for NMFS to have advance knowledge of all individuals interested in its activities, although it is noted that none of the individuals listed in one commenter's November 8, 1993, testimony contacted NMFS to obtain the documentation for review or submitted comments after being informed by the commenter of the proposed action. In addition, at least one of these individuals received a copy of the Navy application in June. The marine scientific community has had sufficient opportunity to become involved in this process.

Comment: Many commenters believe that NMFS should have made more of an effort to locate alternative sites as required by NEPA. One commenter believed that NMFS must evaluate the proposed site in concert with other possible sites. One commenter asserts that NMFS has not considered previously used sites. Another commenter believed that the MMPA required NMFS to evaluate alternate sites to ensure the least practicable adverse impact upon affected species.

Response: The purpose of the EA was to evaluate the impact of the proposed issuance of a small take authorization to the Navy to incidentally take marine mammals within the OSTR. Under that Federal action, NMFS identified two alternatives, in addition to the proposal. The alternatives to the proposal were to issue the LOA without mitigation requirements and to not issue a small take authorization, the no action alternative. Alternatives such as alternative sites or methods were identified as being beyond the scope of the proposed action. Because NMFS is not authorizing the detonation of explosives, only the proposed taking of marine mammals incidental to such detonations, NMFS is of the opinion that the site determination and method of operation is the responsibility of the Navy (provided NMFS is assured that there was not a practicable alternative to ship shock testing that would result in not taking marine mammals). As stated in the EA, if a Small Take LOA is not given to the Navy (no action alternative), because the take was either not small or would result in more than a negligible impact to the species, then the Navy could elect to relocate the test site or take some other action. Refer to the response under the "Outer Sea Test Range" below for additional discussion on this topic.

Comment: One commenter claims that NMFS has not considered (as an alternative in the EA) a reduction in the size of the proposed site. Another wanted the Navy to not conduct tests

north of 33°27′ N. latitude within the OSTR.

Response: The Navy will be utilizing survey data collected in 1993 to limit the test site within the OSTR to an area with few or no marine mammals. Current aerial survey data will be used to "reduce" the test area to a site that will minimize potential impacts to marine mammals. Arbitrarily limiting the test area to a particular corner or area of the OSTR at this stage would be premature, and may not result in reduced impacts to marine mammals and other marine life.

Comment: NMFS should consider such alternatives such as a reduction in the number of detonations; the sizes of detonations; and, the period in which detonations are allowed. Additionally, NMFS must give due consideration to alternative forms of testing.

Response: As stated in the Navy's application, the estimated number of large detonations is extremely conservative, and based on an extreme worst case scenario. To ensure conservatism, the Navy multiplied its worst case scenario by 5 (years) to determine the absolute maximum take during the 5-year term of the LOA. It is highly unlikely that the Navy will detonate 60 large charges during the 5-year period. However, there is justification, although remote, for requiring up to 12 detonations on an annual basis.

Four shots of gradually increasing severity maximizes safety, technical benefits, and economics. Small increases in severity between shots raises confidence in predicting the potential for unforeseen hazards from one shot to the next. Experience, careful planning, and examination of objectives and constraints resolved that 4 shots is the optimum procedure for conducting a shock trial.

For a ship the size of an AEGIS-class destroyer, a 10,000 lb. (4,536 kg) charge is necessary to produce a nearly planar shock wave. A plane wave generates nearly uniform loading on each shot, which is required when measuring responses from thousands of reaction points around the ship.

At this time there is no scientific evidence to indicate that there is any one period of the year when marine mammals are not within the OSTR. Population assessment research in the SCB will be reviewed to determine if seasonal restrictions would result in lower incidental takes. If so, then NMFS would likely take actions necessary to ensure the greatest protection to these marine mammals.

Where feasible, the Navy conducts underwater explosives tests using computer modeling and land-based test facilities. Two contractor-operated quarries in Virginia are used for some of the test work. In addition, a test pond has been constructed at the Army Combat Systems Test Activity in Aberdeen, MD. These facilities are limited to testing small and medium size components on floating platforms. Ponds, like those at Aberdeen and in Virginia reduce the need for testing in the ocean. It is impossible, however, to eliminate the need for open-water testing for programs such as full-scale ship shock trials.

Comment: One commenter believed that it would be "better and wiser to wait, if at all possible, until the [computer-model] technology is perfected than to gamble so much on the current imperfections of the [ship shock trial] technology."

Response: As stated in the EA, the "no action" alternative is unacceptable to the Navy as the "Live Fire" testing program is required by the National Defense Authorization Act (10 U.S.C. 139). By law, ships and critical components or systems constructed for the Navy must undergo shock tests prior to service with the fleet to determine the integrity of the structure and electronic systems that are vital to the overall function and performance of the vessel and crew under wartime combat conditions. While full-scale testing is minimized by the use of laboratory tests and calculations, the Navy believes that it is essential to have large-scale tests at sea to determine total system response. The alternative of not testing at all would expose the ship and its crew to its first real test under hostile fire. It is the Navy's judgement that this is not the appropriate time nor place to determine that a component or system fails a test. While alternatives are theoretically possible, they have not been developed to the point of practical application.

Other Environmental Concerns

Comment: Commenters were concerned that the area of ship shock testing could be a feeding area for whales and/or have an impact on marine mammal food sources or migratory routes.

Response: There is no evidence that the offshore SCB area is an especially important area for feeding, although it is known that some of the larger whales tend to prefer the Patton Escarpment area and may migrate along it. NMFS review of the best available scientific information indicates that impacts on food sources and migratory routes however, would be minimal and would not result in a long-term impact.

Sea Otters

Comment: Several commenters were concerned about the potential for taking California sea otters and that the Navy has not applied to the U.S. Fish and Wildlife Service (USFWS) for an incidental take authorization.

Response: As noted in the EA accompanying the proposed rule, an incidental take of sea otters has not been requested because sea otters are coastal animals found north of San Luis Obispo, CA, that prefer to remain within a few kilometers of the coast. Those sea otters inhabiting San Nicolas Island as a result of the USFWS' translocation efforts are unlikely to be within the OSTR. The Navy will be consulting with USFWS on their activity under section 7 of the ESA.

Gray Whales

Comment: Many commenters expressed concern that the detonation of explosives may impact gray whales, especially pregnant females and those females with calves and that the EA is in error on statements regarding times of gray whale migration through the SCB. Many commenters were concerned about pregnant gray whales being in the area in February.

Response: As noted in the EA, gray whales were sighted by Forney and Barlow (1993)[6] off the SCB in the winter/spring surveys, but not in the OSTR (*i.e.*, Area 2); 39 percent were located in Area 1 (inshore SCB) and 61 percent were found north of Pt. Conception. In addition, the EA notes that Jones and Swartz (1990)[7] documented gray whale occurrence around the Channel Islands National Marine Sanctuary during January 1986 and 1987 via aerial surveys and that most gray whales (78 percent of cow-calf pairs and 94 percent of all other whales) were within 3 nm (5.6 km) of the islands. Animals classified by researchers as "calves of the season" comprised nearly 12 percent of the raw counts. Ninety-four percent of the cow-calf pairs were seen east of Santa Rosa Island. It should also be noted that pregnant gray whales are in the vanguard of the south-bound migration and, because they give birth from January to mid-February in and near the lagoons in Baja California, should have

[6] Forney, K.A. and J. Barlow. 1993. Winter abundance estimates for cetaceans along the California coast based on 1991 and 1992 aerial surveys. NMFS Doc. SOCCS 2. 29pp.

[7] Jones, M.L. and S. L. Swartz. 1990. Abundance and distribution of gray whales in the Channel Islands National Marine Sanctuary during the southward migration in January 1986 and 1987. IWC Gray Whale Workshop. paper SC/A90/G17. 15pp.

migrated south through the SCB by February, the time of the proposed testing.

Guadalupe Fur Seal/Steller Sea Lion

Comment: One commenter questioned the Navy's rationale for not requesting an incidental take of Guadalupe fur seals and NMFS' position should this species be taken. Another had similar concerns regarding the Steller sea lion.

Response: The Navy made a determination not to request an incidental take authorization for Guadalupe fur seals and Steller sea lions because their population sizes in the SCB (one to five fur seals and 100 sea lions) were low and that mitigation measures would likely detect these species if an individual was there. In the event a Guadalupe fur seal or a Steller sea lion is taken, such taking would be in violation of the MMPA (and the LOA). Alternatively, if one is seen in the area prior to the test but not taken because the test is delayed until the animal leaves, then the Navy may elect to request an amendment to its LOA and the authorizing regulations for future tests.

Noise in the Ocean

Comment: One commenter recommended NMFS implement regulations to limit decibel levels from all human activity in the marine environment.

Response: Such a proposal is outside the scope of this rulemaking.

Outer Sea Test Range

Comment: Many commenters were concerned over the choice of the OSTR because of its proximity to the Channel Islands. Many were concerned that alternative sites to the OSTR had not been adequately explored. One commenter believed the test site should be moved another 100 nm west, another that the test area should be limited to south of 33°27'N. latitude, while another was concerned that utilizing the southern and western extremities of the OSTR would put the test near the San Juan Seamount, an area of high primary and fish productivity.

Response: The EA listed the criteria that the Navy established for locating ship shock trials. Refer to that document for a list of these criteria. However, it should be recognized that the Pacific Missile Range is an oceanic area designated for military activities since it was established by the Department of Defense in 1946. According to the Navy, the OSTR has been used for ship shock trials since 1990. The only other West Coast site where ship shock trials of this magnitude have been conducted is within a military operations area east of San Clemente Island. However, since 1990, environmental concerns and the large number of fleet operations (greater than 200,000 per year), preclude the use of this area for ship shock trials. Thus, this alternative was eliminated from further consideration by the Navy. For a discussion on utilizing portions of the OSTR, refer to similar concerns under "National Environmental Policy Act Concerns" above and "Channel Islands National Marine Sanctuary Concerns" below.

It should also be noted that the San Juan Seamount is approximately 12 nm west of the western boundary of the OSTR. Because the 2-nm safety zone will be within the OSTR, at a minimum, the test site will be 14 nm from the eastern slope of the seamount. The Navy believes, and NMFS concurs, that there will be little or no impact on the resources of the seamount.

Comment: One commenter was concerned about the impact of duds and projectiles that sink to the bottom and either explode later or at a greater depth.

Response: For the ship shock trials, the explosive is not allowed to free fall through the water column but is towed to the site, armed, buoyed at the appropriate depth (125 ft (38 m) or 200 ft (61 m) depending upon the charge weight) and detonated. Unexploded ordnance is towed to a deep-water site for safe disposal.

Channel Islands National Marine Sanctuary

Comment: Many reviewers commented on the Channel Islands National Marine Sanctuary and the impacts that they believe the ship shock testing will have on the marine life within the sanctuary. One commenter stated that the contiguous line drawn between the two territorial sea limits was only 6 miles (9.6 km) from the sanctuary at Santa Barbara. This commenter believed the shock tests could have a negative effect on the marine mammals and seabirds that inhabit the Sanctuary. The commenter goes on to state that both noise and concussions generated from the test could, at the least, startle and disrupt pinnipeds, cetaceans and seabirds within the Sanctuary, and at the worst, the concussions could injure or kill these creatures. This commenter recommended that NMFS require the Navy to conduct ship shock trials south of latitude 33°27' N., at least 20 nm from the Sanctuary boundary, to give an added buffer zone to protect the resources of the Sanctuary.

Response: There is no evidence that ship shock tests, conducted within the OSTR will impact the resources of the Channel Islands National Marine Sanctuary, and commenters have not offered contrary documentation (refer to related comment under "Mitigation and Monitoring" above). While the actual ship shock test site will likely be upwards of 50 nm from the outer boundary of the Sanctuary (in the southwestern portion of the OSTR), the northeastern boundary of the OSTR is located no closer than 6 nm (11.1 km) from the outer perimeter of the Sanctuary, a distance greater than calculated for onset of all types of take except acoustic harassment at significant water depths. As mentioned previously, the Navy will be utilizing NMFS' 1993 marine mammal survey data to limit the test site within the OSTR to an area with few or no marine mammals. This current aerial survey data will be used to "reduce" the test area to a site that will minimize potential impacts to marine mammals. Arbitrarily limiting the test area to a particular area of the OSTR at this stage would be premature, and may not result in reduced impacts to marine mammals and other marine life.

Other Concerns

Comment: The City of Malibu and one supporting commenter object to the issuance of an incidental take permit because the activity is contrary to local policy aimed at protecting marine life in the waters of Santa Monica Bay and the nearby Channel Islands.

Response: The OSTR is located over 70 nm from Santa Monica Bay, and the likely test site an additional 30–40 nm farther offshore. Based upon information in the EA on this issue, NMFS believes that there will not be an adverse impact on marine resources of the SCB (including Santa Monica Bay).

Comment: One commenter noted that NMFS has failed to ensure that the proposed activity is consistent with California's coastal management program and that the EA failed to address the manner in which protection of environmentally sensitive habitat areas, the productivity and quality of coastal waters and the protection of marine resources will be accomplished.

Response: NMFS believes the EA fully describes the mitigation measures that will be required under the small take regulations to protect marine life and particularly marine mammals. Because the Navy is considered the lead agency under 15 CFR 930.40, the EA does not discuss the California coastal management program. However, the proposed rule made note of the requirement for consistency. This final

rule contains a similar statement (see Classification below).

Comment: One commenter noted that the proposed activity may require a section 404 permit under the Federal Water Pollution Control Act and a permit under the Rivers and Harbors Act of 1989 (sic).

Response: These concerns have been forwarded to the Navy for resolution, since they are beyond the scope of NMFS' authority.

Comment: One commenter wanted the Navy ship shock trials subject to oversight by a civilian committee drawn from among marine mammal protectionists and civic leaders in the affected area, including the City of Malibu.

Response: The regulations and LOA authorizing the incidental taking require the Navy to allow NMFS personnel onboard vessels and aircraft during ship shock trials and other operations using explosives within the OSTR. NMFS authority does not extend to requiring the Navy to be subject to an oversight committee of citizens. The comment has been forwarded to the Navy for consideration.

Comment: One commenter asserted that if the LOA is issued, "a financial bonus will accrue to the Southwest Fisheries Science Center in La Jolla. This represents a clear conflict of interest on the part of NMFS. The appearance of a conflict could have been mitigated had other entities with marine mammal monitoring experience been requested to bid; that would also have resulted in the lowest cost estimate by SWFSC, which had no incentive to trim its cost estimate and which will have no incentive to limit actual costs to an amount less than the estimated costs."

Response: NMFS does not concur with this assessment. The Navy, in 1992, made preliminary inquiries regarding the cost of conducting marine mammal surveys with private entities experienced in marine mammal surveys, in addition to the NMFS' SWFSC. The Navy independently determined that NMFS would be able to conduct the surveys at approximately one-third the cost of the other groups contacted. With that determination made, the Navy made an inter-agency transfer of funds to NMFS to conduct the surveys and post-test monitoring. The SWFSC proposal was included in the application of the Navy for a small take authorization and available therefor for review and comment at that time. No comments were received on the proposal.

Changes from the Proposed Rule

The codification scheme in the final rule has been modified to avoid a conflict with another proposed rule (58 FR 33425, June 17, 1993).

Description of Rule

The subject regulations govern the incidental taking of marine mammals during the detonation of conventional explosives in the OSTR off Pt. Mugu, CA. The regulations are based on the entire rulemaking record including evidence submitted in an application from the Navy that the detonation of conventional explosives off the Channel Islands, CA, over the next 5 years may involve the incidental taking (harassment, injury or death) of marine mammals. NMFS has determined that the total taking will involve small numbers of marine mammals and will have a negligible impact on the species for which the take is requested, their habitat, and the availability of these species for subsistence uses. Although two of the species of pinnipeds on the Channel Islands, the northern fur seal and the harbor seal, are taken for subsistence in Alaska, an incidental take from the populations in the Channel Islands would not reduce the availability of these species for subsistence in Alaska. Therefore, NMFS has determined that this incidental taking will not have an unmitigable adverse impact on the availability of marine mammals for subsistence by Alaska natives.

The regulations apply only to Navy projects involving the underwater detonation of conventional explosives in the offshore waters of the OSTR of the NAWC, off Pt. Mugu, Ventura County, CA. All activities must be conducted in a manner that minimizes adverse effects on marine mammals authorized to be taken and their habitat and in conformance with any requirements in a LOA issued under these regulations.

Under these regulations NMFS is issuing the Navy a 1-year LOA. This LOA is the official document allowing the incidental taking of marine mammals. It will be renewed annually upon receipt of a report detailing activities conducted during the previous 12 months, including levels of taking of marine mammals, provided the required mitigation measures are undertaken and the annual taking authorizations are not exceeded. If a species' annual authorization is exceeded, NMFS will review the documentation submitted with the annual report to ensure that the taking continues to have no more than a negligible impact on the species or stock involved.

The annual report must be submitted to the Assistant Administrator for Fisheries, NOAA (AA), at least 120 days prior to the date of expiration of the annual LOA in order for issuance of a LOA for the following year.

Any substantive changes to the conditions contained within the annual LOA, including suspension or withdrawal, over the 5-year period the regulations are in effect will be subject to public review and comment unless NMFS determines that an emergency exists that necessitates immediate action. Whether changes are "substantive" will be determined by the AA. The regulations require the holder of the LOA to cooperate with NMFS and any other Federal, state or local agency monitoring impacts resulting from this activity on these species. At its discretion, NMFS will place observers onboard either the fleet tug or the target vessel, or both, and on any ship or aircraft involved in marine mammal reconnaissance and monitoring either prior to, during, or after explosives detonation.

Description of Habitat and Marine Mammals Affected by Military Weapons Testing at the OSTR

The OSTR is an area in the eastern North Pacific Ocean, seaward of the Channel Islands, CA, a minimum of 20 nm (37 km) northwest of San Nicolas Island, 20 nm (37 km) south of San Miguel Island, and 12 nm (22 km) southwest of Santa Rosa Island. The area extends 60 nm (111 km) westward of San Nicolas Island to 120°45'W. longitude in the OSTR of the NAWC, Ventura County, CA. Water depths in the test area range from approximately 200 to over 1,900 fathoms (366 to 3,475 m). Shallowest depths (less than 750 m) in the test area are associated with the Patton Ridge, identifiable as a rise oriented north-south and located nearly mid-range.

The following species/stocks of marine mammals are found in the SCB: (1) California sea lion (*Zalophus californianus*); (2) harbor seal (*Phoca vitulina*); (3) northern elephant seal (*Mironga anguistrostris*); (4) northern fur seal (*Callorhinus ursinus*); (5) Steller sea lions (*Eumetopias jubatus*); (6) Guadalupe fur seals (*Arctocephalus townsendi*); (7) common dolphin (*Delphinus delphis*); (8) striped dolphin (*Stenella coeruleoalba*); (9) Risso's dolphin (*Grampus griseus*); (10) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*); (11) northern right whale dolphin (*Lissodelphis borealis*); (12) Dall's porpoise (*Phocoenoides dalli*);

(13) bottlenose dolphin (*Tursiops truncatus*); (14) killer whale (*Orcinus orca*); (15) sperm whale (*Physeter macrocephalus*); (16) beaked whales (seven species requested as a single group because of difficulty in identification including Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Hubb's beaked whale (*Mesoplodon carlhubbsi*), Blainville's beaked whale (*M. densirostris*), Ginkgo-toothed beaked whale (*M. ginkgodens*), Hector's beaked whale (*M. hectori*) and Stejneger's beaked whale (*M. stejnegeri*)); (17) minke whale (*Balaenoptera acutorostrata*); (18) blue whale (*Balaenoptera musculus*); (19) fin whale (*Balaenoptera physalus*); (20) sei whale (*Balaenoptera borealis*); (21) humpback whale (*Megaptera novaeangliae*); (22) gray whale (*Eschrichtius robustus*); and (23) right whale (*Eubalaena glacialis*). However, because of low population estimates in the SCB and marine mammal monitoring measures planned in association with the tests, no impacts or incidental takes of Steller sea lions or Guadalupe fur seals are expected and incidental take authorizations have not been requested by the Navy or authorized by NMFS. A description of the SCB area and the biology and abundance of the marine mammal species in the SCB can be found in the EA prepared in association with this activity. A copy of the EA is available upon request (see **ADDRESSES**).

Effects of Military Testing Activities on Marine Mammals

Potential impacts to marine mammals from explosives detonation include exposure to chemical by-products, lethal and injurious incidental take, as well as physical and acoustic harassment. Injury or death could occur as a direct result of the explosive blast (concussion) and resultant cavitation[8]. Injury could include damage to internal organs and/or the auditory system. Non-injurious harassment of marine mammals could occur as a result of physiological response to both the explosion-generated shockwave as well as to the acoustic signature of the detonation. Based upon information provided by the Navy, NMFS believes it is unlikely that injury will occur from exposure to the chemical by-products released into the surface waters.

[8] The area of cavitation is where the water pressure becomes extremely low with the passage of the negative shock wave that moves down from the surface. The water separates, producing a region of cavitation bubbles for a brief time. This region of cavitation bubbles then collapses and generates a weak positive pressure wave.

Measures to Reduce Impacts

Because of the highly mobile nature of ship shock tests, successful avoidance of, or reduction in, the incidental taking of marine mammals is dependent upon the detection of marine mammals. Extensive pre-test surveys in the test area are being conducted to document on-range marine mammal seasonal abundance and to detect areas of high mammal density. Three 80-nm^2 (275-km^2) areas for ship shock tests will be identified prior to each test based on an analysis of the 1993 NMFS 12-month aerial survey results and historical marine mammal survey data. Intensive aerial surveys will be flown in the three targeted areas 1 month prior to the first scheduled shock test and the areas will subsequently be ranked from low to high with respect to marine mammal density. An intensive survey will be conducted in the primary test area 2 days prior to each scheduled shock test. If scientists determine that marine mammal density is higher than previously predicted, the alternate secondary and tertiary areas will be surveyed to determine their short-term suitability for shock tests.

On test days, extensive aerial and surface surveillance will be conducted to monitor for the presence, behavior and condition of marine mammals before and after each detonation. Pre- and post-detonation aerial reconnaissance surveys will be conducted from a fixed-wing aircraft, Navy helicopters, and from the test vessel. If marine mammals, sea turtles, or endangered or threatened seabirds are seen within the 2-nm (3.7-km)-radius safety zone (for the 10,000-lb. (4,536-kg) charge), detonation of the charge will be delayed until the animals exit the safety zone. Tests will not be conducted if marine mammals, sea turtles, seabird flocks or fish schools are detected within the safety zone. Also, tests will not be conducted when weather or sea conditions preclude adequate aerial surveillance. No detonations will be permitted without the concurrence of the NAWC Ecologist assigned to the program as the Environmental Coordinator. Any dead marine mammals and turtles seen by aerial survey observers during the pre-test (48 hours prior to test) aerial survey of one or more of the three 80-nm^2 (275-km^2) will be documented and marked/tagged by MART, onboard an independent recovery vessel, so that those animals that were dead prior to the ship shock test will not be included in incidental take numbers reported to NMFS after the trial. Full necropsies will not be performed on these animals, although tissues may be collected if time permits.

Monitoring and Reporting

After each detonation, an aerial reconnaissance survey of the ship shock test zone, to 3 nm (5.6 km) radial distance from the detonation, will be conducted by NMFS SWFSC scientists who will notify the MART personnel if any dead or injured marine animals are seen. The occurrence of live marine mammals, seabirds and sea turtles will also be documented by aerial and vessel survey personnel. Under the direction of a Navy marine mammal veterinarian, examination and recovery of any dead or injured animals will be undertaken by MART. Necropsies will be performed and tissue samples taken by MART's veterinary staff from any dead marine mammals or sea turtles. Activities related to the monitoring of the Navy ship shock program will be authorized under these regulations and will not require a separate permit under section 104 of the MMPA.

If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods will be reviewed by the Navy and NMFS and appropriate changes may be made. Inter-agency coordination between the Navy and NMFS/SWFSC will ensure that the tests will proceed by the safest possible means.

Within 90 days after any detonation project, the Navy will have to submit a summary report to NMFS. This report must include the following information: (1) Date and time of the test; (2) a summary of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; and (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the safety zone.

An annual report must be submitted by the Navy to NMFS at least 120 days prior to the date of expiration of the annual LOA in order for issuance of a LOA for the following year. This annual report must contain: (1) The date and time of all tests conducted during the previous calendar year; (2) a description of all pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; (3) the results of the post-test monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the

detonation and numbers that may have been harassed due to presence within the safety zone; and (4) the results of population assessment studies conducted by Navy or contract scientists, if any, made on marine mammals in the SCB during the previous year.

Letter of Authorization

NMFS will renew the LOA annually upon timely receipt of the summary and annual reports, a determination that the maximum incidental take authorizations were not exceeded, and that the mitigation measures were undertaken. If one or more species' lethal or serious injury take levels were reached or exceeded during the previous year, NMFS will require the holder of the LOA to provide additional documentation, as may be requested, on the taking, including the results of the required reviews of the ship shock test procedure and the monitoring methods and any measures that will be undertaken in the following year to prevent exceeding the authorized incidental take levels in the future.

NMFS will review these reports and if it is determined that the taking may be having more than a negligible impact on any species, or if the methods of taking, monitoring, or reporting are not being substantially complied with, NMFS shall, under § 228.6(e), and after notice and comment in the **Federal Register**, withdraw or suspend the LOA.

Conclusions

While NMFS believes that detonation of the larger (i.e., 1,200- and 10,000-lb. (544- and 4,536-kg)) charges may affect some marine mammals, the latest abundance and distribution estimates, based on the best available scientific information, indicate that the taking will have no more than a negligible impact on the populations of marine mammals inhabiting the waters of the SCB. NMFS concurs with the Navy that impacts can be mitigated by mandating conservative safety zones for marine mammal exclusion, incorporating an active aerial survey monitoring effort in the program both prior to, and after detonation of explosives, and provided tests are not conducted whenever marine mammals are detected within the testing zone, or if weather and sea conditions preclude adequate aerial surveillance.

Classification

The AA has determined, based on an EA prepared by NMFS, that this action will not have a significant impact on the environment. As a result of this determination, an environmental impact statement has not been prepared. The EA is available upon request (see **ADDRESSES**).

NMFS has consulted with the Navy under section 7 of the ESA for this rule. The required mitigation measures, as well as monitoring tests are expected to provide adequate protection for listed species. A copy of the Biological Opinion and Incidental Take Statement resulting from this consultation is available upon request (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration, when this rule was proposed, that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis was required or prepared.

This rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act. The collections have been approved by the Office of Management and Budget under OMB Control No. 0648–0151. The reporting burden for this collection is estimated to be approximately 27 hours per project, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR), 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attn: Paperwork Reduction Act Project 0648–0151.)

NMFS has determined that this rule may result in an impact on living marine resources that also reside within the coastal zone of the State of California, a State with an approved coastal zone management program under the Coastal Zone Management Act (CZMA). However, aerial monitoring and other mitigation measures that will be employed by the Navy prior to, and during, testing will result in a negligible impact on marine mammals and other marine life. The Navy will be submitting a consistency determination for this activity to the State of California's Division of Governmental Coordination for review pursuant to the CZMA section 307(c)(1) and 15 CFR part 930, subpart C. The Navy, under 15 CFR 930.40 (multiple Federal agency participation), will be the lead Federal agency for CZMA Federal consistency purposes.

List of Subjects in 50 CFR Part 228

Marine mammals, Reporting and recordkeeping requirements.

Dated: January 31, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 228 is amended as follows:

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart F is added to read as follows:

Subpart F—Taking of Marine Mammals Incidental to Underwater Detonation of Conventional Explosives by the Department of Defense

Sec.

Subpart F—Taking of Marine Mammals Incidental to Underwater Detonation of Conventional Explosives by the Department of Defense

§ 228.51 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the Outer Sea Test Range of the Naval Air Warfare Center, Pt. Mugu, Ventura County, CA.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited annually to the following species and species groups:

	Lethal	Injury	Harassment
California Sea Lion	2	38	173
Harbor Seal	2	16	68
Northern Elephant Seal	9	158	724
Northern Fur Seal	2	13	57
Common Dolphin	1	16	67
Striped Dolphin	0	2	5
Risso's Dolphin	0	1	2

	Lethal	Injury	Harassment
Pacific White-Sided Dolphin	3	52	236
Northern Rt. Whale Dolphin	2	24	108
Dall's Porpoise	0	6	18
Bottlenose Dolphin	0	4	15
Killer Whale	0	0	1
Sperm Whale	0	6	20
Beaked Whales	0	0	3
Minke Whale	0	0	4
Blue Whale	0	1	11
Fin Whale	0	0	6
Sei Whale	0	0	1
Humpback Whale	0	0	4
Gray Whale	0	3	40
Right Whale	0	0	1

§ 228.52 Effective dates.

Regulations in this subpart are effective from March 3, 1994, through March 3, 1999.

§ 228.53 Permissible methods of taking; mitigation.

(a) U.S. citizens holding a Letter of Authorization issued pursuant to § 228.6 may incidentally, but not intentionally, take marine mammals by harassment, injury or killing in the course of the detonation of conventional explosives up to the following maximum annual level within the area described in § 228.51(a):

(1) 12 detonations of 10,000 lbs (4,536 kg);

(2) 2 detonations of 1,200 lbs (544 kg);

(3) 10 detonations of 100 lbs (45 kg);

(4) 10 detonations of 10 lbs (4.5 kg); and

(5) 20 detonations of 1 lb (0.45 kg), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone.

(2) If weather and/or sea conditions preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next project.

§ 228.54 Prohibitions.

Notwithstanding takings authorized by § 228.53 or by a Letter of Authorization issued under § 228.6, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional;

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued or renewed under §§ 228.6 or 228.56; and

(c) The incidental taking of any marine mammal of a species either not specified in this subpart or whose taking authorization for the year has been reached.

§ 228.55 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA (Telephone: (310) 980–4001), at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate a qualified on-site individual(s) to record the effects of explosives detonation on marine mammals that inhabit the Outer Sea Test Range.

(c) The primary test area, and if necessary, secondary and tertiary test areas, in the Outer Sea Test Range, must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, approximately 48 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each test or project. Monitoring shall include, but not necessarily be limited to, aerial surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d) (1) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination, will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(2) Activities related to the monitoring described in paragraph (d)(1) of this section or the Letter of Authorization issued under this part may include the retention of marine mammals without the need for a separate scientific research permit. The use of such marine mammals in other scientific research may be authorized pursuant to 50 CFR parts 216 and 220.

(e) At its discretion, the National Marine Fisheries Service may place an observer on either the towing vessel, target vessel, or both, and on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(f) A summary report must be submitted to the Assistant Administrator for Fisheries, NOAA, within 90 days after the conclusion of any explosives detonation project. This report must include the following information:

(1) Date and time of the test(s);

(2) A summary of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; and

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the safety zone.

(g) An annual report must be submitted to the Assistant Administrator for Fisheries, NOAA, no later than 120 days prior to the date of expiration of the annual Letter of Authorization in order for issuance of a Letter of Authorization for the following year. This annual report must contain the following information:

(1) Date and time of all tests conducted under the expiring Letter of Authorization;

(2) A description of all pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations;

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone;

(4) If one or more species' take levels have been reached or exceeded during the previous year, additional documentation must be provided on the taking and a description of any measures that will be taken in the following year to prevent exceeding the authorized incidental take level.

(5) Results of any population assessment studies made on marine mammals in the Outer Sea Test Range during the previous year.

§ 228.56 Renewal of Letter of Authorization.

(a) A Letter of Authorization issued under § 228.6 for the activity identified in § 228.51(a) will be renewed annually upon:

(1) Timely receipt of the reports required under § 228.55(f) and (g), which have been reviewed by the Assistant Administrator for Fisheries, NOAA, and determined to be acceptable;

(2) A determination that the maximum incidental take authorizations in § 228.51(b) will not be exceeded; and

(3) A determination that the mitigation measures required under § 228.53(b) and the Letter of Authorization have been undertaken.

(b) If a species' annual authorization is exceeded, the National Marine Fisheries Service will review the documentation submitted with the annual report required under § 228.55(g), to determine that the taking is not having more than a negligible impact on the species or stock involved.

(c) Notice of issuance of a renewal of the Letter of Authorization will be published in the **Federal Register**.

§ 228.57 Modifications to Letter of Authorization.

(a) In addition to complying with the provisions of § 228.6, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 228.6 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 228.46, without modification, is not considered a substantive modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 228.51, or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 228.51, the Letter of Authorization issued pursuant to § 228.6, or renewed pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 94-2482 Filed 2-1-94; 8:45 am]
BILLING CODE 3510-22-P

50 CFR Part 651

[Docket No. 931066-4014; 122893C]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement gear requirements for vessels fishing for northern shrimp in the Northeast multispecies fishery during the 1993/94 fishing season. Vessels fishing for or possessing northern shrimp in the U.S. Exclusive Economic Zone (EEZ) and all Federally permitted fishing vessels fishing for or possessing northern shrimp are required to install and use a finfish excluder device throughout the fishing season and throughout the range. The intent of this requirement is to reduce the bycatch of groundfish in the small-mesh northern shrimp fishery.

EFFECTIVE DATES: January 31, 1994.

ADDRESSES: Copies of the referenced documents may be obtained from Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Martin Jaffe (Fishery Management Specialist, Northeast Region, NMFS), 508-281-9272.

SUPPLEMENTARY INFORMATION: The regulations implementing Amendment 4 (56 FR 24724, May 31, 1991) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) include a measure that requires the New England Fishery Management Council (Council) to make necessary recommendations to the Director, Northeast Region, NMFS (Regional Director), on gear requirements for vessels fishing for northern shrimp.

The Council's recommendation for the 1993/94 fishery that any vessel catching, harvesting or landing northern shrimp be required to use a finfish excluder device, particularly the Nordmore Grate (grate), with a rigid or semi-rigid bar spacing of not more than one inch (2.54 cm), throughout the shrimp season, was published on November 8, 1993 (58 FR 59232). The notice also provided a summary of an economic analysis contained in an environmental assessment prepared by the Council to accompany its recommendation. The publication of the recommendation initiated a comment period, which concluded on December 3, 1993.

Comments and Responses

A comment on the Council's recommendation was received from the Center for Marine Conservation, which supported approval of the Council's recommendation.

This comment was considered in the agency's decision to approve the Council's recommendation.

Changes From the Proposed Rule to the Final Rule

Changes were made to all of the sections under § 651.20(b)(3)(vi), inclusive, to conform to the finfish excluder device requirement as published in the proposed rule to Amendment 5 to the multispecies FMP (58 FR 57774). All of the changes are for clarity and brevity. No substantive changes were made.

Classification

This action is authorized by 50 CFR part 651 and is consistent with the Magnuson Act and other applicable law.

The General Counsel Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA, has determined that it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule under section 553(d) of the Administrative Procedure Act. Fishermen harvesting northern shrimp already are required to use Nordmore grates in state waters of Maine, New Hampshire, and Massachusetts and have had ample time to adjust to this requirement. Implementation of this same requirement in the EEZ provides similar requirements for fishermen throughout the range of the fishery.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: January 27, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.20 is amended by adding paragraph (b)(3)(vi) to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

* * * * *

(b) * * *

(3) * * *

(vi) Pursuant to § 651.20(b)(3)(iv), beginning January 31, 1994, any vessel issued a permit under § 651.4 that is fishing for, harvesting, possessing or landing northern shrimp, and any vessel fishing for, catching, harvesting or possessing northern shrimp in the EEZ, must have a properly configured and installed finfish excluder device in any net used to fish for or harvest northern shrimp, throughout the northern shrimp season as established or modified by the Atlantic States Marine Fisheries Commission. The finfish excluder device must be configured and installed consistent with the following specifications (see Figure 6 for an example of a properly configured and installed finfish excluder device):

(A) The finfish excluder device must be a rigid or semi-rigid grate consisting of parallel bars of not more than 1 inch (2.54 cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl.

(B) The finfish excluder device must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without said fish or objects have first passed between the bars of the grate.

(C) A fish outlet or hole must be provided to allow fish or other objects that are too large to pass between the bars of the grate to pass out of the net. The aftermost edge of this outlet must be at least as wide as the grate at the point of attachment. Said fish outlet must extend forward from the grate toward the mouth of the net.

(D) A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

3. Figure 6 is added to part 651 as follows:

BILLING CODE 3510-22-M

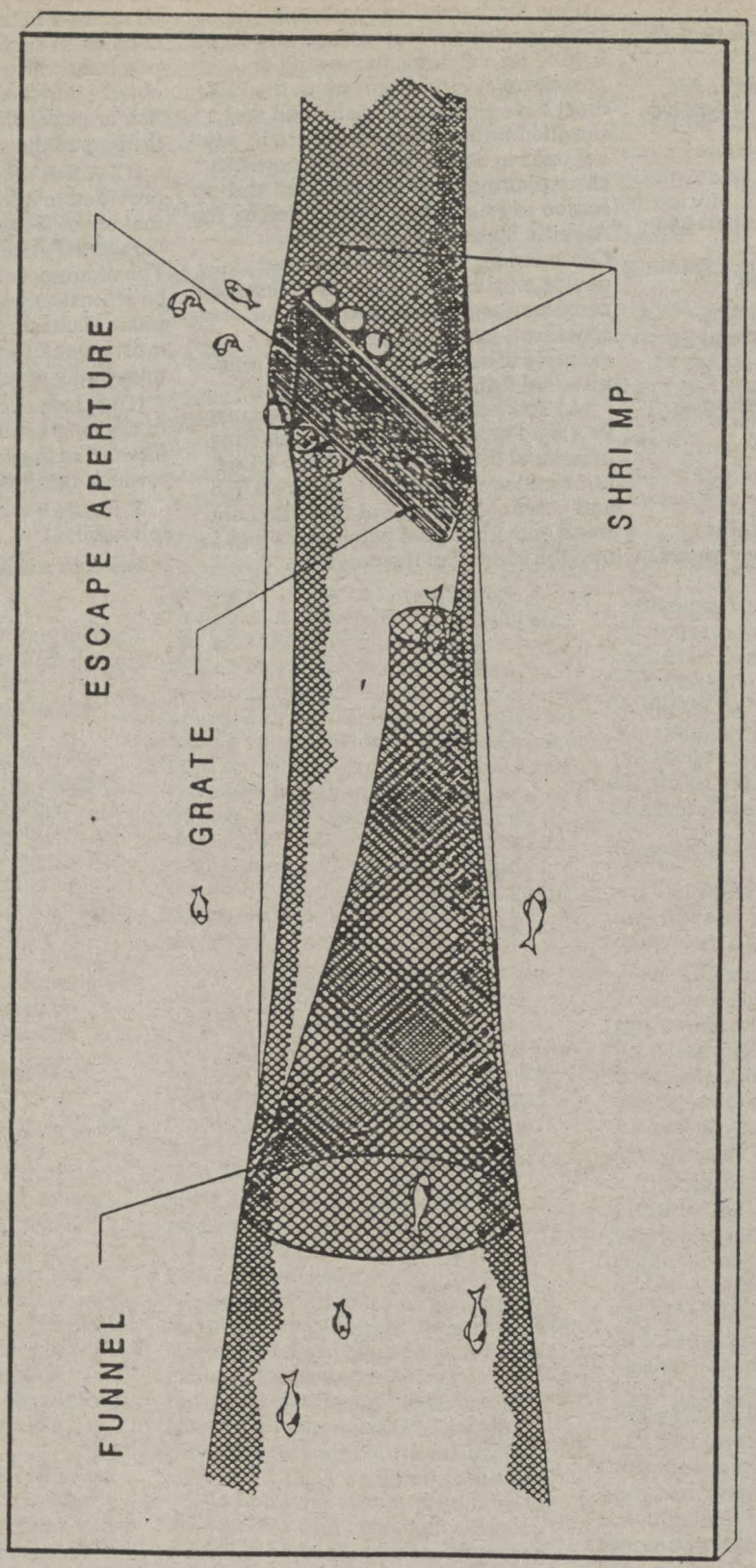

Figure 6. Nordmore grate.

[FR Doc. 94–2415 Filed 1–31–94; 3:29 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 59, No. 23
Thursday, February 3, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, 1094, 1096, 1099, and 1108

[Docket Nos. AO–366–A36, et al.; DA–93–21]

Milk in the Georgia and Certain Other Marketing Areas; Extension of Time for Filing Briefs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing briefs.

SUMMARY: This document extends the time for filing briefs on the record of the hearing held from November 1, 1993, through November 5, 1993, in Atlanta, Georgia, concerning proposals to merge several Federal milk orders in the southern United States. Several parties requested more time to review the hearing record and to prepare briefs.

DATES: Briefs are now due on or before February 25, 1994.

ADDRESSES: Briefs (4 copies) should be filed with the Hearing Clerk, room 1083, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued September 3, 1993; published September 10, 1993 (58 FR 47653).

Supplemental Notice of Hearing: Issued October 13, 1993; published October 15, 1993 (58 FR 53436).

Notice is hereby given that the time for filing briefs and proposed findings and conclusions on the record of the public hearing held from November 1, 1993, through November 5, 1993, in Atlanta, Georgia, with respect to the tentative marketing agreements and to the orders regulating the handling of milk in the Georgia and certain other Federal milk marketing areas pursuant to the notice of hearing issued September 3, 1993, and published September 10, 1993 (58 FR 47653), and the supplemental notice of hearing issued October 13, 1993, and published October 15, 1993 (58 FR 53436), is hereby further extended to February 25, 1994.

On December 17, 1993, prior to the certification of the hearing record, the initial deadline for filing briefs was extended by the presiding Administrative Law Judge from January 10 to January 24, 1994, at the request of several hearing participants. The time for filing briefs is now being further extended to February 25, 1994, in response to additional requests from several hearing participants.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

7 CFR part	Marketing area	Docket No.
1007	Georgia	AO–366–A36
1093	Alabama-West Florida.	AO–366–A14
1094	New Orleans-Mississippi.	AO–366–A56
1096	Greater Louisiana	AO–257–A43
1108	Central Arkansas	AO–243–A46
1099	Paducah, Kentucky	AO–183–A45

Authority: 7 U.S.C. 601–674.

Dated: January 24, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–2419 Filed 2–2–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19 and 20

RIN 3150–AE80–1

Radiation Protection Requirements; Amended Definitions and Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations concerning radiation protection requirements. The proposed rule would: Delete the definition of "Controlled area" to make it clear that any area to which access is restricted for the purpose of radiological protection is a restricted area as defined in the regulation, revise the definition of "Occupational dose" to delete reference to the "Restricted area," revise the definition of unrestricted area to be consistent with the deletion of controlled area, revise the provision entitled "Instruction to Workers," so that radiation protection training will be provided to all persons with the potential to be occupationally exposed and restore a provision to provide that whenever licensees are required to report exposures of individual members of the public to the NRC, then those individuals are to receive copies of the report.

DATES: Comment period expires April 4, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm Federal workdays.

Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, the supporting statement submitted to OMB, and comments received may be examined at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3740.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1991, (56 FR 23360) the NRC amended 10 CFR part 20 to add its revised "Standards for Protection Against Radiation (10 CFR 20.1001–20.2402). Compliance became

mandatory for all licensees on January 1, 1994. Extensive discussion regarding interpretation and implementation of the new rules has ensued both within the NRC and Agreement State staffs and with licensees and other interested parties.

The revised standards include a definition for the term "Controlled area." The term is defined to be an area outside of a restricted area, but inside the site boundary access to which can be limited for any reason (10 CFR 20.1003). The term "Restricted area" was retained in the revised standards from the original regulation, 10 CFR part 20, and is defined as an area, "access to which is limited by the licensees for the purpose of protecting individuals against undue risks from exposure to radiation or radioactive materials * * *" (10 CFR 20.1003)." Neither the revised standards themselves, nor the supplemental information provide a basis for deciding whether to designate a given area as a "Restricted area" or a "Controlled area." In discussions with licensees and Agreement States, the absence of such a clear delineation appears to be the cause of considerable uncertainty among a number of licensees regarding how to implement the revised standards in this regard. The NRC believes that this situation can be alleviated by eliminating the term "Controlled area" from the regulations. This change has the effect of returning the regulation to the former situation in which areas are either restricted or unrestricted for purposes of radiation protection. As has always been the case, licensees continue to have the option of controlling access to areas for reasons other than radiation protection.

The definition of "Unrestricted area" in the revised standard acknowledges the existence of controlled areas and currently is defined as an area "access to which is neither limited nor controlled by the licensee" (10 CFR 20.1003). Deletion of the term "Controlled area" permits return to the former situation in which areas are either restricted or unrestricted for radiation protection purposes, and the Commission now proposes to revise the definition of "Unrestricted area" to make this clear.

Under this proposal, licensees would continue to have the option to control access for reasons other than radiation protection. As before, the definitions of "restricted area" and of "unrestricted area" do not preclude the existence of areas in which access is limited for purposes other than protecting individuals against undue risks from exposure to radiation and/or radioactive materials.

"Occupational dose" is defined currently in the revised standards "as the dose received by an individual in a restricted area or in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive materials * * *." (10 CFR 20.1003) Through meetings with licensees to discuss the revised standards, the Commission has become aware that this definition can be interpreted to allow individuals who are members of the public to receive an "occupational dose" and exceed public dose limits if they enter restricted areas. This was not the intention of the Commission in promulgating the revised standards. A fundamental principle present in the regulations is that a member of the public is subject to the limits for a member of the public (§ 20.1301 (a)(1)), irrespective of that individual's location. The Commission is separately considering revisions to parts 20 and 35, whereby licensees who have been administered radioactive materials to patients and released them in accordance with § 35.75 would be exempt from the provisions of § 20.1301 (a)(1) with regard to the radioactive material in the released patient. Licensees must be able to ensure that a member of the public, if present in a restricted area, as well as any other area, will not exceed an exposure of 100 mrem/year. The suggestion that permission to expose a member of the public to a dose in excess of 100 mrem in a year, is created by that individual's location in a restricted area, can be removed by a simple modification to the definition of occupational dose, specifically by eliminating reference to dose received in a restricted area. In addition, "radiation and/or radioactive material" should replace "radiation and radioactive material" to correct a technical error in the text of the rule. With these changes, it would become clear that occupational dose is dose received as a result of an individual's employment in which assigned duties involve exposure to radiation and/or radioactive material. These changes would also make it clear that the dose received by a member of the public cannot be permitted to exceed the public dose limit even if the individual is receiving a portion of that dose while in a restricted area. The remainder of the definition of occupational dose would not be modified by this action, and maintains the description of both what is included and what is excluded in occupational dose for purposes of clarity.

The regulation entitled "Instruction to Workers," 10 CFR 19.12, currently requires that all individuals working in or frequenting any portion of a restricted area be instructed in the health protection problems associated with exposure to radiation and in radiation protection procedures needed to minimize exposure. Under this provision, if a worker never enters a restricted area, he or she would require no radiation protection training. On the other hand, members of the public, such as delivery persons who might occasionally enter a restricted area, would be required to be trained even though the nature of their activities would perhaps not warrant such instruction. The proposed change to § 19.12 would make it clear that anyone in the course of their employment in which the individual's assigned duties involve the potential for exposure to radiation and/or radioactive material would have to be provided appropriate radiation protection training.

Concern about training requirements has been expressed for certain categories of workers and members of the public illustrated by the following cases: Case (1) involves a member of the public who is potentially exposed to some radiation while visiting a facility or making deliveries, and, Case (2), a maintenance worker or contractor who is exposed to radiation while performing repairs or cleaning. In order to decide if training is required, and what type of training is appropriate, certain provisions of the rules must be considered.

First, after January 1, 1994, a member of the public cannot be permitted to receive more than 100 mrem in a year unless specifically approved by the Commission (10 CFR 20.1301).[1] Second, training commensurate with the potential radiological health protection problems present would be required by the proposed 10 CFR 19.12 only for individuals whose assigned duties involve a potential for exposure to radiation and/or radioactive materials. In the first case above, the individual's activities, i.e., visiting a facility or making deliveries, were not assigned by the licensee or a licensee contractor. Under these conditions, the individual is a member of the public, and the licensee must ensure that exposures are less than 100 mrem in a year, and further must be as low as is reasonably achievable (ALARA). Doses to these individuals should be controlled by

[1] As discussed above, the Commission is separately considering revisions to parts 20 and 35 to address cases whereby licensees have treated patients with radioactive material and released them under the provisions of § 35.75, and thus would not fall under the provision of § 20.1301(a)(1) with regard to the radioactive material in the released patient.

other measures that would be included in an ALARA program, such as shielding, escorting, removing radioactive sources during visits, and controlling stay-times. Therefore, the Commission believes training is not required. However, nothing in the rules prevents providing training to any individuals.

In the second case, the individual's activities, i.e., performing repairs or cleaning, are performed during the course of employment with the licensee or a contractor to the licensee and the individuals' assigned duties do involve the potential for exposure to radiation. Although the individual may not enter a restricted area and, whether this worker's dose exceeds 100 mrem in a year or not, if the worker has the potential to receive some occupational exposure, training "commensurate with potential radiological health protection problems present in the workplace" is required to ensure informed consent and control of exposure. This training does not have to be extensive. The Commission believes that doses received by individual workers at a rate greater than the 1mSv (100 mrem) in a year public dose limit constitute a level of risk which requires training at least to a level which provides information on the risks of exposure and methods for reducing exposure in keeping with the ALARA principle.

Prior to the promulgation of the revised standards, paragraph 20.409(b) of part 20 provided that whenever a licensee is required to report to the Commission any exposure of an identified individual worker or member of the public to radiation and/or radioactive material, the licensee must also notify that individual.[2] Although it was the intent of the Commission that this provision remain in 10 CFR part 20, the requirement was inadvertently omitted from the revised standards. Accordingly, § 20.2205 is added to clearly restore to 10 CFR part 20 the intention that individual workers and individual members of the public are to be notified of exposures in excess of the dose limits that would require notifying the NRC. Under § 20.2205, the licensees' obligation to notify an individual will be triggered if (and only if) the licensee's required report to NRC identifies that individual by name as having received an exposure to radiation and/or to radioactive material. The licensee's obligation to identify individuals in a required report to the NRC is as provided for in 10 CFR 20.2203.

[2] See also 10 CFR 19.13(d) (When a licensee is required to report to the Commission any exposure of an individual to radiation or radioactive material, the licensee must also provide the individual a report on their exposure data.)

Agreement States

The proposed amendments would apply to all NRC licensees and Agreement States (Definitions in 10 CFR part 20 are Division I matters and are thus matters of compatibility). The proposed changes, with the exception of the addition of § 20.2205 and the revision of the definition of unrestricted area, were discussed in June 1993 with Agreement State representatives and the changes discussed were strongly supported. Agreement States have the opportunity to comment further on all of the proposed changes during the public comment period. The Agreement States cannot be expected to modify their regulations before the January 1, 1994, date. Some States will need as much as 3 years to conform to the changes. In the interim, States may wish to consider alternative methods to address the issues presented in this rulemaking.

A draft of the proposed amendments, with the exception of the addition of § 20.2205 and the revision of the definition of unrestricted area, was provided to the Agreement States prior to submitting the amendments for publication in the **Federal Register**. Several States submitted comments. One State suggested limiting public doses to "licensed" sources of radiation while another observed that keeping this provision general permitted the States to control exposure from Naturally Occurring and Accelerator Produced Radioactive Material (NARM) as well as byproduct material. The proposed rule is general and does not specify licensed sources. This approach is consistent with the rule, as expressed in § 20.1001 to control doses from all sources of radiation that are under the control of the licensee.

Another State provided a revised definition of "Member of the Public" which would not rely on the definition of "Occupational dose" and would make clear that workers exposed to NARM are not members of the public. The intent here was to minimize the change to the definitions and still accomplish the needed clarifications of these issues. For that reason and because "Occupational dose" is defined as from "licensed or unlicensed" sources, this change is not made in the proposed rule.

Two States argued that the draft language restricting the training requirements in 10 CFR 19.12 to individuals involved "in licensed activities" and "in the licensee's facility" was too restrictive, and might prevent workers such as housekeeping staff and security staff from receiving minimal, but needed training. The language of the training requirement is more inclusive in this proposed rule.

One State proposed retaining in § 20.2104(a) a requirement to determine prior occupational dose if an individual enters the restricted area. The NRC staff believes that retaining only the words "is likely to receive, in a year, an occupational dose requiring monitoring," is sufficient to trigger a determination of prior dose. The State also suggested wording which would make licensees responsible for accounting for occupational exposure from nonlicensed activities. This is consistent with the Commission's position and the draft is revised accordingly.

Description

The provision in 10 CFR Part 20 for a "Controlled area," its definition and its use in several other sections of Part 20 would be deleted. Licensees would continue to have the option to control access to areas for reasons other than radiation protection.

The proposed rulemaking would revise the definition of "Occupational dose" to delete reference to the "Restricted area" so that the occupational dose limit and its associated radiation protection provisions, such as training and individual monitoring requirements, would apply to an individual who in the course of employment has assigned duties involving exposure to radiation and/or to radioactive material. This change would also indicate that public dose limits cannot be exceeded for members of the public even if they enter a restricted area.

The definition of "Unrestricted area" would be revised to make it clear that for the purposes of radiation protection areas, are either restricted or unrestricted and that access to unrestricted areas can be controlled for reasons other than radiation protection.

"Instructions to Workers," 10 CFR 19.12, would be revised to make clear that training commensurate with the hazards present must be provided to all individuals who have the potential to be occupationally exposed rather than just to individuals working in or frequenting any portion of a restricted area.

"Reports to individuals of exceeding dose limits," 10 CFR 20.2205, is added to restore to part 20 the Commission's intent that any identified individual, including members of the public, who receives an exposure in excess of the dose limits for which a report to the NRC is required, will receive

notification of that exposure from the licensee.

Impact

The Commission believes that these proposed changes will have some, albeit relatively minor, impacts on licensees. The impacts associated with each of the changes are outlined below.

For the deletion of the definition of controlled area, the Commission believes that there will be little impact on most power reactor licensees. Although some confusion has surfaced associated with the intent of the terms "controlled area" and "occupational dose," these definitions have been discussed extensively with and by industry representatives, and the Commission believes that the proposed rule generally reflects current and planned practices of many reactor licensees. Licensees can continue to designate areas as controlled areas for purposes other than radiological protection, irrespective of whether the term appears in the rule or not.

Some licensees have already implemented the revised standards, and procedures have been written which would require changes as a result of this proposed rulemaking if these procedures have employed the concept of controlling areas for radiological protection.

For those reactor licensees who have already formally implemented the revised standards or who have a need for the additional flexibility afforded by the use of the concept of controlled area for purposes of radiological protection, the provisions for exemptions from the NRC's regulations provides an avenue of relief. The NRC currently believes that the elimination of the concept of "Controlled area" will have such a small impact on most power reactor licensees that it does not constitute a backfit as envisioned by 10 CFR 50.109. The action removes flexibility but does not directly impose new procedures. However, the NRC welcomes comments on whether this action does in fact constitute a backfit, the degree of burden imposed by the action, particularly for licensees who have already implemented the revised standards, and on whether in the limited matter of "Controlled area," provisions for grandfathering should be provided in the final rule to avoid such burdens.

Revising the definition of "Unrestricted area" further makes clear the NRC's intent that for purposes of radiation protection, areas are either restricted or unrestricted. Some minor modifications to procedures and training may be necessitated by this change.

For the change involving the term occupational exposure, the Commission believes that some minor editorial modifications of procedures and training will be necessary. Occupational exposure was previously defined to include both presence in a restricted area and activities involving exposure to radiation and/or radioactive materials. Elimination of the reference to restricted areas will not change the scope of applicability of the term occupational dose for most licensees' employees. Furthermore, this change as it relates to doses to members of the public, makes it clear that doses to members of the public must remain within the limits for members of the public, even if they are present within a restricted area. This distinction may result in some minor corrections to procedures and administrative control levels. However, it should be noted that licensees have controlled and continue to control the exposure of these individuals to small fractions of the public dose limit. Thus, there should be no significant change necessary in licensee activities.

The conforming change to 10 CFR part 19 is minor and will affect only a small number of licensees and will have a negligible impact. For the modification of the training requirements to match the definition of occupational exposure, the Commission believes that licensees will need to make relatively minor modifications to training procedures to reflect the new definition. Training remains "commensurate with potential radiological health protection problems" and, thus, the scope of the training activities is not anticipated to require modification. The Commission also believes that any small incremental increase in burden of additional occupationally exposed individuals requiring training will be offset by the reduction in burden inherent in the fact that members of the public entering a restricted area will no longer be required to be trained in accordance with the provisions of 10 CFR part 19.

The addition to 10 CFR part 20 of a requirement to notify individual workers and individual members of the public of exposures in excess of the dose limits is not considered to impose any additional burden on licensees.[3] The addition would make clear in 10 CFR part 20, where such a requirement would normally be expected, that when existing reporting requirements would result in reporting exposure information on an identified individual member of the public to NRC, then the identified individual would receive a report on his or her exposure.

The impact of these proposed rule changes on materials licensees is considered to be minimal. The NRC believes that these changes will provide additional clarity when implementing the revised 10 CFR part 20 and will not have an adverse impact on the health and safety of workers or the public. Removing the implied option to establish controlled areas for radiation protection purposes, and simplifying the definition and administration of occupational dose will require minimal changes in procedures and in some cases may even involve a net reduction in burden. Licensees continue to have the option to control access to areas for reasons other than radiological protection. Licensees who have already written procedures including provisions for controlled areas for radiation protection purposes would have the option to request exemptions. Materials licensees, particularly those who have already implemented the new regulations, are invited to comment on whether or not the proposed changes impose significant burden.

Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required.

The option of establishing access control over an area owned by a licensee for reasons of security, for example, exists whether or not the term "Controlled area" is specifically defined in 10 CFR part 20. The provision for controlled areas in the rule is not a requirement. Deleting the term "Controlled area" from the rule is not expected to result in a significant change in the number of areas to be controlled or in an increase in exposure to any member of the public. Public access to licensee owned facilities and land is expected to remain unchanged as a result of this amendment. No other environmental impact or benefit is associated with the "Controlled area" provision.

Changing the definition of "Occupational dose" to make it clear that individuals whose assigned duties

[3] See also 10 CFR 19.13(d) (When a licensee is required to report to the Commission any exposure of an individual to radiation or radioactive material, the licensee must also provide the individual a report on their exposure data.)

involve exposure to radiation and radioactivity are subject to radiation protection procedures associated with occupational exposure and that members of the public cannot be permitted to receive doses that exceed public dose limits just by entering a restricted area is considered a benefit with no environmental impact. This change would have no effect on the type or quantity of material released into the environment and, if anything, would make it less likely for members of the public to be exposed to more than public dose limits.

Revising the definition of "Unrestricted area" to make it clear that for purposes of radiation protection, areas are either restricted or unrestricted, has no perceived environmental impact.

Amending the radiation protection training requirements to clarify that they apply to individuals who in the course of employment are potentially exposed to radiation and/or to radioactive material, regardless of whether they may or may not be within a restricted area, will result in no impact on the environment.

Adding § 20.2205 to part 20, which would clearly restore the Commission's policy that individual workers and individual members of the public are notified, whenever NRC is notified, that they have been exposed to radiation or radioactive material in excess of the dose limits, will have no impact on the environment.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room 2120 L Street, NW., (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Alan K. Roecklein, U.S. NRC, 5650 Nicholson Lane, Rockville, MD 20852, (301) 492–3740.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, 3150–0014, 3150–0005, and 3150–0006.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Alan K. Roecklein, U.S. NRC, 5640 Nicholson Lane, Rockville, MD 20852, (301) 492–3740.

The NRC requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

Based upon the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that, if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities. The proposed amendments would apply to all NRC and Agreement State licensees. Because these amendments only clarify, restore, and conform existing requirements to the 1991 version of part 20, they are considered to have no significant economic impact on any large or small entities.

However, the NRC is seeking comments and suggested modifications because of the widely differing conditions under which small licensees operate. Any small entity subject to this proposed regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the NRC of this in a comment that indicates—

(a) The licensee's size in terms of annual income or revenue, number of employees and, if the licensee is a treatment center, the number of beds and patients treated annually;

(b) How the proposed regulation would result in a significant economic burden upon the licensee as compared to that on a larger licensee;

(c) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;

(d) The benefits that would be gained or the detriments that would be avoided by the licensee if the proposed regulation was modified as suggested by the commenter; and

(e) How the regulation, as modified, would still adequately protect the public health and safety.

Backfit Analysis

Because 10 CFR parts 19 and 20 apply to all NRC licensees, any proposed changes to these parts must be evaluated to determine if these changes constitute backfitting for reactor licensees such that the provisions of 10 CFR 50.109, "Backfitting," apply. The following discussion addresses that evaluation.

The proposed rule consists of five changes: (1) Deletion of the definition and use of the term "Controlled area," (2) deletion of the phrase "in a restricted area or" contained in the definition of occupational dose, (3) revising the definition of "Unrestricted area," (4) modification of the training requirement contained in 10 CFR 19.12, and (5) restoring a requirement that individuals members of the public be notified when they are identified in reports to NRC on exposures in excess of the limits.

The deletion of the definition of controlled area is a corrective change. The term was originally added with the 1991 revision of part 20 to acknowledge the need for licensees to control access to areas for purposes other than radiation protection. The use of the term was not intended to be mandatory. Numerous questions from licensees regarding implementing Controlled areas have arisen. Since the staff believes that the use of a controlled area has no radiation protection function other than potential use in estimating the occupancy time for demonstrating compliance with the 100 mrem/year limit, it is being proposed that the term be deleted from part 20.

For those reactor licensees who have already formally implemented the revised standards or who have a need for the additional flexibility afforded by the use of the concept of controlled area for purposes of radiological protection, the provisions for exemptions from the NRC's regulations provide an avenue of relief. The NRC currently believes that the elimination of the concept of "Controlled area" will have such a small impact on most power reactor licensees that it does not constitute a backfit as envisioned by 10 CFR 50.109. The action removes flexibility but does not directly impose new procedures. However, the NRC welcomes comments on whether this action does in fact constitute a backfit, the degree of burden imposed by the action, particularly for licensees who have already implemented the revised 10 CFR part 20, and on whether in the limited matter of "Controlled area" provisions for grandfathering should be provided in the final rule to avoid such burdens.

The deletion of the phrase "in a restricted area or," contained in the definition of occupational dose is to ensure that the Commission's intent to apply the dose limits of 10 CFR 20.1301 to members of the public regardless of their physical location, is properly implemented. Currently, only workers

are subject to the higher occupational dose limits and just because a member of the public is permitted entry into a restricted area does not mean that he or she should be allowed to receive an occupational dose and exceed the public dose limit. For this reason, the reference to a restricted area is being removed from the definition of occupational dose.

Revising the definition of "Unrestricted area," would make the current staff position clear that for purposes of radiation protection, areas are either restricted or unrestricted. This change is consistent with the former 10 CFR part 20 and conforms to removing "Controlled area" from the rule.

The change to 10 CFR 19.12 will be consistent with the proposed revised definition of occupational exposure. Since occupational dose is to be based upon the individual's activities involving radiation and/or radioactive materials, rather than the location of the work (e.g., restricted area), a conforming change in part 19 is needed to ensure that workers who receive an occupational dose are appropriately trained regardless of the physical location where the work is performed. This is also needed so that members of the public, such as delivery persons, who occasionally enter a restricted area will not be required to receive occupational training merely because they entered a restricted area when their potential exposures do not exceed the 1 Msv (100 mrem) public dose limit and their activities, therefore, would not subject them to any significant risk.

The NRC staff believes that the impact of the change to 10 CFR 19.12 is negligible for 10 CFR part 50 licensees, given that the expected numbers of additional occupationally exposed individuals requiring training is small relative to the number of workers already receiving training at these facilities. The NRC staff also believes that these licensees have been providing training to these individuals, even though not specifically required by the regulations.

The addition of 10 CFR 20.2205, "Reports to individuals of exceeding dose limits" is considered to be the restoration of a previous requirement. Section 20.409(b) of part 20 requires licensees to notify an individual worker or member of the public whenever a report to the NRC is required regarding an exposure of the identified individual. This requirement was inadvertently omitted from the revised standards. Although few incidents occur that involved exposure of a member of the public in excess of dose limits, restoring this provision to part 20 will ensure that licensees are aware of their obligation to notify the individual if, and when, they are required to submit a report to NRC of an occurrence that identifies that individual as having received an exposure.

The Commission believes that these proposed changes to 10 CFR part 20 will have some, albeit minor, impacts on reactor licensees. Licensees who have already implemented the revised standards, or who have written procedures to do so, will need to revise those procedures to reflect the proposed changes if promulgated. Benefits such as simplifying the use of restricted and unrestricted area designation, making it clear that only workers can receive occupational dose, tying training requirements to the potential to receive occupational exposure and ensuring that overexposed individuals are notified, are considered by the Commission to far outweigh the impacts. However, these benefits are qualitative in nature, and are expressed in terms of reduced uncertainty in regulatory requirements, clarity of regulatory intent, and consistency of regulatory approach. Thus the NRC believes that the modifications proposed are not backfits. However, the NRC invites comments from affected licensees on whether these proposed changes impose significant burdens and whether or not the actions constitute a backfit.

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendment to 10 CFR parts 19 and 20.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATION

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, secs. 234, 88 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); secs. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Public Law 95–601, secs. 10, 92 Stat. 2951 (41 U.S.C. 5851).

2. Section 19.12 is revised to read as follows:

§ 19.12 Instructions to workers.

(a) All individuals who in the course of employment in which the individuals' assigned duties involve the potential for exposure to radiation and/or radioactive material shall be—

(1) Kept informed of the storage, transfer, or use of radiation and/or radioactive material;

(2) Instructed in the health protection problems associated with exposure to radiation and/or radioactive material, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(3) Instructed in, and required to observe, to the extent within the workers control, the applicable provisions of Commission regulations and licenses for the protection of personnel from exposures to radiation and/or radioactive material;

(4) Instructed of their responsibility to report promptly to the licensee any condition which may lead to or cause a violation of Commission regulations and licenses or unnecessary exposure to radiation and/or radioactive material;

(5) Instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation and/or radioactive material; and

(6) Advised as to the radiation exposure reports which workers may request pursuant to § 19.13.

(b) The extent of these instructions must be commensurate with potential radiological health protection problems present in the workplace.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2282); sec. 201, as amended, 202,

206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Sec. 20.408 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

4. In § 20.1003, remove the definition "Controlled area."

5. In § 20.1003, the definitions of "*Member of the public*," "*Occupational dose*," "*Public dose*," and "*Unrestricted area*" are revised to read as follows:

§ 20.1003 Definitions.

* * * * *

Member of the public means any individual except when that individual is receiving an occupational dose.

* * * * *

Occupational dose means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

* * * * *

Public dose means the dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of a licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

* * * * *

Unrestricted area means any area that is not a restricted area.

* * * * *

6. In § 20.1301 paragraph (b) is revised to read as follows:

§ 20.1301 Dose limits for individual members of the public.

* * * * *

(b) If the licensee permits members of the public to have access to restricted areas, the limits for members of the public continue to apply to those individuals.

* * * * *

7. In § 20.1302 paragraph (a) is revised to read as follows:

§ 20.1302 Compliance with dose limits for individual members of the public.

(a) The licensee shall make or cause to be made, as appropriate, surveys of radiation levels in unrestricted areas and radioactive materials in effluents released to unrestricted areas to demonstrate compliance with the dose limits for individual members of the public in § 20.1301.

* * * * *

8. Section 20.1801 is revised to read as follows:

§ 20.1801 Security of stored material.

The licensee shall secure from unauthorized removal or access licensed materials that are stored in unrestricted areas.

9. Section 20.1802 is revised to read as follows:

§ 20.1802 Control of material not in storage.

The licensee shall control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage.

10. In § 20.2104 the introductory text of paragraph (a) is revised to read as follows:

§ 20.2104 Determination of prior occupational dose.

(a) For each individual who is likely to receive, in a year, an occupational dose requiring monitoring pursuant to § 20.1502 the licensee shall—

* * * * *

11. Section § 20.2205 is added as follows:

§ 20.2205 Reports to individuals of exceeding dose limits.

When a licensee is required, pursuant to the provisions of §§ 20.2203, 20.2204, or 20.2206, to report to the Commission any exposure of an identified individual worker or member of the public to radiation or radioactive material, the licensee shall also provide to the individual, a written report on his or her exposure data included therein. This report must be transmitted at a time no later than the transmittal to the Commission.

Dated at Rockville, Maryland, this 19th day of January, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–2394 Filed 2–2–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 93–19]

RIN 1557–AB32

Federal Reserve System

12 CFR Part 228

[Docket No. R–0822]

Federal Deposit Insurance Corporation

12 CFR Part 345

RIN 3064–AB27

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 93–234]

RIN 1550–AA69

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint notice of proposed rulemaking; extension of comment period.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the Federal financial supervisory agencies) are extending the comment period until March 24, 1994, for their joint notice of proposed rulemaking regarding their regulations concerning the Community Reinvestment Act (CRA) published on December 21, 1993.

DATES: Comments must be received by March 24, 1994.

ADDRESSES: *OCC:* Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 93–19. Comments will be available for public inspection and photocopying at the same location.

BOARD: Comments should be directed to: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Docket No. R–0822, 20th Street and Constitution

Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FDIC: Comments should be directed to: Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. They may be hand delivered to room 402, 1776 F Street, NW., Washington, DC between 8:30 a.m. and 4:30 p.m. on business days. They may be sent by facsimile transmission to (202) 898–3838. Comments will be available for public inspection at the FDIC Reading Room #7118 at 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

OTS: Comments should be directed to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 93–234. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for public inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874–5216; Matthew Roberts, Special Counsel, Chief Counsel's Office, (202) 874–5200.

BOARD: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452–3585; Scott G. Alvarez, Associate General Counsel, Legal Division, (202) 452–3583; Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452–3667.

FDIC: Bobbie Jean Norris, Deputy Director, Office of Consumer Affairs, (202) 898–6760; Valerie Thomas, Review Examiner (Compliance), Division of Supervision, (202) 898–7155; Ann Loikow, Counsel, (202) 898–3796; Sandy Comenetz, Counsel, (202) 898–3582, Regulation and Legislation Section, Legal Division.

OTS: Timothy R. Burniston, Deputy Assistant Director for Policy, (202) 906–5629; Theresa A. Stark, Program Analyst, Specialized Programs, (202) 906–7054; Lewis A. Segall, Senior Attorney, Legal Policy Division, Chief Counsel's Office, (202) 906–6648.

SUPPLEMENTARY INFORMATION: The joint notice of proposed rulemaking was published in the **Federal Register** on December 21, 1993 (58 FR 67466), and comments were to be received by February 22, 1994. The new deadline for submission of comments is March 24, 1994.

The agencies believe that additional time for comment is warranted due to the magnitude of the proposed changes, the complexity of the issues, the level of interest in the subject, and delays posed by the holiday season. The agencies are nonetheless pleased with the volume of comment received to date and believe that further comment will contribute measurably to improvements in the final rule. Therefore, the agencies have determined that it is appropriate to extend the comment period for an additional 30 days. This additional time should allow commenters adequate time fully to analyze and to respond to the proposal.

All interested persons are invited to submit comments during this period.

Dated: January 25, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System.

Dated: January 25, 1994.

William W. Wiles,

Secretary.

By order of the Board of Directors.

Dated at Washington, DC, this 27th day of January, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

Dated: January 25, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–2371 Filed 2–2–94; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–183–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspecting to detect cracking in certain lower lobe lap joints, and repair, if necessary; reporting any findings of discrepancies; replacing certain countersunk fasteners with protruding head fasteners; and verifying that the airplanes do not have certain countersunk fasteners. This action would increase the area to be inspected, delete the reporting requirement, and expand the applicability. This proposal is prompted by reports of fuselage skin cracking in certain areas and findings of additional countersunk fasteners. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the fuselage.

DATES: Comments must be received by March 30, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–183–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 19, 1989, the FAA issued AD 90–01–07, Amendment 39–6440 (55 FR 255, January 4, 1990), applicable to Boeing Model 747 series airplanes, having line numbers 201 through 765, inclusive, to require:

1. Repetitively inspecting to detect cracking in certain lower lobe lap joints, and repair, if necessary;
2. Reporting any findings of discrepancies;
3. Replacing certain countersunk fasteners with protruding head fasteners; and
4. Verifying that airplanes do not have certain countersunk fasteners.

That action was prompted by reports of cracking in the lap joint of stringer 34 near the interface with the wing-to-body fairing. The requirements of that AD are intended to prevent in-flight depressurization due to undetected cracks in the skin of the airplane.

Since the issuance of that AD, the FAA has received additional reports of cracking in the upper row of countersunk fasteners in the lap splice in the area adjacent to the wing-to-body fairing intersection on Model 747 series airplanes. Additionally, several airplanes were found to have more than the necessary number of countersunk fasteners, which were installed during production at the upper row of the lap splice at stringer 34. These countersunk fasteners were found in the upper row of fasteners in the lap splice near the wing-to-body fairing and skin intersection between body station (BS) 768 and the circumferential skin joint at BS 741.

Cracking in locations where countersunk fasteners were installed, if not corrected, could result in reduced structural integrity of the fuselage.

The FAA has reviewed and approved Boeing Service Bulletin 747–53A2312, Revision 2, dated October 8, 1992, that describes procedures for visually inspecting to determine the number of countersunk fasteners in the upper row of the lap splice.

If more than the necessary number of countersunk fasteners were installed during production, this service bulletin specifies conducting an external high frequency eddy current (HFEC) inspection to detect cracking in the skin lap splices at the wing-to-body fairing intersection where countersunk fasteners were found in the upper row of fasteners. If cracking is found, the service bulletin describes procedures for modifying the locations where countersunk fasteners were found by replacing the countersunk fasteners with oversized protruding head fasteners and repairing the skin. These actions were accomplished, prior to delivery, on airplanes having line numbers 815 through 919, inclusive.

If the proper number of countersunk fasteners were installed during production, repetitive inspections are specified in the service bulletin until the locations where countersunk fasteners were installed have been modified.

The service bulletin describes procedures for eventual modification of all airplanes at the location where countersunk fasteners were installed, and repetitive inspections following modification.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–01–07 to:

1. Continue to require inspections to detect cracking in certain lower lobe lap joints, and repair, if necessary;
2. Require visual inspections to determine if countersunk fasteners had been installed between body stations (BS) 741 and 1000 at Stringers (S–)34L, S–34R, S–39L, S–39R, and S–44L, S–44R, and between BS 1480 and 1741 at S–34L, S–34R, S–40L, and S–40R on airplanes having line numbers 201 through 814, inclusive;
3. Require HFEC inspections to detect cracking at all locations where countersunk fasteners were found in the upper row of the lap splice, and repair, if necessary; and
4. Require modification of all locations where countersunk fasteners were found.

Although the actions and compliance times of this proposed AD would differ from the manufacturer's recommendations specified in the service bulletin, the actions themselves would be required to be accomplished in accordance with the procedures of the service bulletin described previously.

There are approximately 723 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 183 airplanes of U.S. registry would be affected by this AD.

The inspections that were previously required by AD 90–01–07, and retained in this AD, take approximately 14 workhours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of these inspection requirements of this AD on U.S. operators is estimated to be $140,910 or $770 per airplane, per inspection cycle.

The additional new inspections that would be required by this AD would take approximately 82 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of these inspection requirements of this AD on U.S. operators is estimated to be $825,330, or $4,510 per airplane

The modification required by this AD would take approximately 124 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts would be nominal in cost. Based on these figures, the total cost impact of the modification requirements of this AD on U.S. operators is estimated to be $1,248,060, or $6,820 per airplane.

Based on the above figures, the total cost impact of the inspection and modification requirements of this AD on U.S. operators is estimated to be $2,214,300, or $11,407 per airplane.

This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The FAA recognizes that the proposed modification would require a large number of work hours to accomplish. However, the 20,000-flight cycle compliance time specified in paragraph (j) of this proposed AD should allow ample time for the modification of all locations where countersunk fasteners were found to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6440 (55 FR 255, January 4, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 93–NM–183–AD. Supersedes AD 90–01–07, Amendment 39–6440.

Applicability: Model 747 series airplanes, having line numbers 201 through 814 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, accomplish the following:

Restatement of Requirements of AD 90–01–07, Amendment 39–6440

(a) For airplanes having line numbers 201 through 765: Conduct a high frequency eddy current (HFEC) inspection to detect cracking of the lower lobe lap joints in the vicinity of the wing-to-body fairing in accordance with Boeing Alert Service Bulletin 747–53A2312, dated June 12, 1989; or Revision 1, dated March 29, 1990; or Revision 2, dated October 8, 1992; at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable. Repeat this inspection thereafter at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

(1) For airplanes that have accumulated less than 11,200 total landings as of February 5, 1990 (the effective date of AD 90–01–07): Prior to the accumulation of 11,000 landings or within the next 1,000 landings after February 5, 1990, whichever occurs later.

(2) For airplanes that have accumulated 11,200 or more total landings but less than 15,201 total landings as of February 5, 1990 (the effective date of AD 90–01–07): Within the next 1,000 landings after February 5, 1990, or prior to the accumulation of 15,500 total landings, whichever occurs earlier.

(3) For airplanes that have accumulated 15,201 or more total landings but less than 18,200 total landings as of February 5, 1990: Within the next 300 landings after February 5, 1990, or prior to the accumulation of 18,250 total landings, whichever occurs earlier.

(4) For airplanes that have accumulated 18,200 or more landings as of February 5, 1990: Within the next 50 landings after February 5, 1990.

(b) For airplanes having line numbers 201 through 765: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) If any cracking is detected, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–53A2312, dated June 12, 1989; or Revision 1, dated March 29, 1990; or Revision 2, dated October 8, 1992.

(2) Prior to the accumulation of 20,000 total landings or within the next 3,000 landings after February 5, 1990 (the effective date of AD 90–01–07), whichever occurs later, modify the airplane by replacing countersunk fasteners in the upper row of the lower lobe lap joints in the vicinity of the wing-to-body fairing with protruding head fasteners, in accordance with the procedures described in the Boeing Alert Service Bulletin 747–53A2312, dated June 12, 1989; or Revision 1, dated March 29, 1990; or Revision 2, dated October 8, 1992.

(c) For purposes of complying with paragraphs (a) and (b) of this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 p.s.i.

(d) For Model 747SR airplanes only: Based on continued mixed operation of lower cabin differentials, the inspection and modification compliance times specified paragraphs (a) and (b) of this AD may be multiplied by a 1.2 adjustment factor.

New Requirements of This AD

(e) Prior to the accumulation of 11,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 3,000 landings prior to the effective date of this AD, conduct a visual inspection to determine if countersunk fasteners have been installed in the area defined in either paragraph (e)(1) or (e)(2), as applicable, in accordance with the procedures described in Boeing Service Bulletin 747–53A2312, Revision 2, dated October 8, 1992. Accomplishment of this inspection terminates the inspection requirements of paragraph (a) of this AD.

(1) For Model 747–100, –200, –300, –400, and 747SR series airplanes: From body stations (BS) 741 to 1000 at Stringers (S–)34L, S–34R, S–39L, S–39R, S–44L, and S–44R, and from BS 1480 to 1741 at S–34L, S–34R, S–40L, and S–40R.

(2) For Model 747SP series airplanes: From BS 520 to 1000 at S–34L, S–34R, S–39L, S–39R, S–44L, and S–44R, and from BS 1480 to 1741 at S–34L, S–34R, S–40L, and S–40R.

(f) If no countersunk fastener is found in the upper row of the lap splice, no further action is required by this AD.

(g) If any countersunk fastener is found in the upper row of the lap splice, prior to further flight, perform an HFEC inspection to detect cracking at all locations where countersunk fasteners were found, in accordance with the procedures described in Boeing Service Bulletin 747–53A2312, Revision 2, dated October 8, 1992.

(h) If no cracking is detected during any inspection required by paragraphs (g), (h), (i), and (k) of this AD, at any location where a countersunk fastener was found, thereafter repeat the inspection at intervals not to exceed 4,000 landings, in accordance with the procedures described in the Boeing Service Bulletin 747–53A2312, Revision 2, dated October 8, 1992.

(i) If cracking is detected during any inspection required by paragraphs (g), (h), (i), and (k) of this AD, at any location where a countersunk fastener was found, prior to further flight, repair and modify that lap joint in accordance with Boeing Service Bulletin 747–53A2312, Revision 2, dated October 8, 1992.

(j) Prior to the accumulation of 20,000 total landings or within 1,000 landings after the effective date of this AD, whichever occurs later, modify all locations where countersunk fasteners were found, in accordance with the procedures described in Boeing Service

Bulletin 747–53A2312, Revision 2, dated October 8, 1992. For purposes of complying with the requirements of this paragraph, locations that were previously modified, in accordance with paragraph (b) of this AD, do not need to be modified again.

(k) Prior to the accumulation of 10,000 total landings following modification of the locations where countersunk fasteners were installed, perform an HFEC inspection at all locations where countersunk fasteners were found, and thereafter, repeat this inspection at intervals not to exceed 4,000 landings, in accordance with the procedures described in Boeing Service Bulletin 747–53A2312, Revision 2, dated October 8, 1992.

(l) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(m) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2410 Filed 2–2–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 11 and 381

[Docket No. RM93–7–000]

Charges and Fees for Hydroelectric Projects

January 26, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on whether it should revise its regulations governing the assessment of annual charges for the administration of Part I of the Federal Power Act and if so, what changes might be appropriate. One alternative that the Commission is considering is to allocate the annual charges for administrative costs among a single class of licensees and exemptees, based on the respective capacity of each hydropower project as measured in kilowatts, with a minimum and maximum charge, and with the assessments to commence at the same time as the commencement of project construction. To ameliorate the potential impact on licensees and exemptees, this alternative would include a transition period of several years for phasing-in the changes. Other alternatives would include, but would not be limited to, retention of the current distinction between municipal and non-municipal licensees including retention of the different formulae by which their respective annual charges are allocated.

DATES: Comments are due on or before April 4, 1994.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM93–7–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1379. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) invites comments on whether it should revise its regulations governing the assessment of annual charges for the administration of Part I of the Federal Power Act (FPA),[1] and if so, what changes might be appropriate. One alternative that the Commission is considering is to allocate the annual charges for administrative costs among a single class of licensees and exemptees, based on the respective capacity of each hydropower project as measured in kilowatts, with a minimum and maximum charge, and with the assessments to commence at the same time as the commencement of project construction. To ameliorate the potential impact on licensees and exemptees, this alternative would include a transition period of several years for phasing-in the changes. Other alternatives would include, but would not be limited to, retention of the current distinction between municipal and non-municipal licensees including retention of the different formulae by which their respective annual charges are allocated.

II. Public Reporting Burden

Under the current regulations, major non-municipal licensees file annual reports containing data on their electric generation during the prior fiscal year. If adopted, one alternative of the regulations discussed herein would eliminate that reporting burden.

III. Background

The Commission is required by section 10(e)(1) of the FPA[2] to collect annual charges from licensees for the cost of administering Part I of the FPA. Part 11 of the Commission's regulations[3] provides the manner in which licensees are charged for such costs. Prior to the adoption of the current regulations in 1958 and 1963, administrative charges were not based on the actual costs of the government, but were in the nature of set fees that were billed for a calendar year.[4] Under the current regulations, the reimbursable costs are determined on a fiscal year basis.

[1] 16 U.S.C. 792–823b.

[2] 16 U.S.C. 803(e)(1).

[3] 18 CFR part 11.

[4] The present system of basing the annual charges on actual costs was adopted in Order No. 205, 19 F.P.C. 907 (1958) (with respect to municipal licensees only), and in Order No. 272, 30 F.P.C. 1333 (1963) (all other licensees); see also Order No. 272A, 31 F.P.C. 1555 (1964).

Section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA)[5] requires the Commission to recover all of its costs for the fiscal year through annual charges and fees.[6] The annual charges assessed pursuant to OBRA are based on an estimate of the Commission's current-fiscal-year costs, with subsequent adjustments based on actual costs.[7] Pursuant to OBRA, the Commission collects annual charges to recover the costs of administering parts II and III of the FPA, as well as the costs the Commission incurs in administering the Natural Gas Act, the Natural Gas Policy Act, and the Interstate Commerce Act. In this regard, we note that section 3401(a)(2) of OBRA provides that "[t]he provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act."

IV. Discussion

A. Allocation Among Different Classes of Licensees

The existing § 11.1 provides three different allocation formulae for three different classes of licensees. For non-municipal licensees of projects of more than 2,000 horsepower of installed capacity, § 11.1(a) sets forth an allocation formula that is based on a combination of the project's authorized installed capacity and the energy actually generated.[8] For municipal licensees of projects of more than 2,000 horsepower, § 11.1(b) sets forth an allocation formula based solely on capacity.[9] For all licensees (both municipal and non-municipal) of projects of 2,000 horsepower or less of installed capacity, § 11.1(c) specifies an annual charge of five cents per horsepower, with a minimum charge of $5 per year.[10]

The Commission believes that the process of collecting data and assessing charges could be conducted more efficiently if the allocation were based on a single formula, and questions whether any presently-valid purpose is served by perpetuating the divergent formulae. Therefore, one alternative the Commission is considering is to use the same formula to allocate the annual charges among a single pool of licensees that includes both municipal licensees (*i.e.*, those who are not fully exempt from annual charges) and non-municipal licensees, as well as minor licensees and (as discussed below) exemptees. One variation of that alternative is to base that formula entirely on authorized installed capacity. Another variation would be to base the formula entirely on generation. A third alternative would be to base it on a combination of capacity and generation.

We recognize that using the same formula to allocate the annual charges among a single pool of licensees (and exemptees) would cause a large increase, both in total dollars and percentage, that major municipal licensees as a group experience. We solicit comment on this impact. One approach the Commission could consider (discussed below) would be the adoption of a three-year transition period for phasing in the resulting cost changes.

Changing the allocation formula from a mix of capacity and generation to capacity alone would reduce the Commission's administrative burden as well as the reporting requirements of major non-municipal licensees. Under the current system, the Commission obtains annual generation data from non-municipal project operators; delays in providing this information to the Commission complicate the billing process. By using authorized installed capacity exclusively, the Commission would always have the apportionment data on hand and the calculation of the bills would be simplified.

The Commission is also considering alternative formulae, such as an allocation based in whole or in part on generation measured in kilowatt hours. In this regard, the Commission notes that the annual charges it assesses pursuant to OBRA are all allocated among the regulated entities pursuant to a formula based on an appropriate measure of volume rather than on a measure of capacity. OBRA requires the Commission to compute those annual charges based on methods which the Commission determines to be "fair and equitable."[11] Annual charges under Parts II and III of the FPA and related statutes are apportioned to public utilities based on the data they submit with respect to megawatt-hours of adjusted sales for resale and adjusted coordination sales.[12] Annual charges under the Natural Gas Act and the Natural Gas Policy Act of 1978 and related statutes are allocated among natural gas pipeline companies based on the volumes of gas sold or transported by each company.[13] Annual charges under the Interstate Commerce Act are allocated among oil pipelines based on their operating revenues.[14]

With respect to the annual charges for the administration of part I of the FPA pursuant to section 10(e)(1) of the FPA, the analog to allocation of the annual charges pursuant to OBRA would be an allocation scheme based on the electric energy actually generated by the various licensed and exempted hydropower projects rather than on their respective capacity to so generate. We are concerned, however, that the generation data reporting requirements necessary to implement such a scheme may impose an undue burden on smaller licensees and exemptees. Accordingly, the Commission invites comment on the propriety of using generation data rather than authorized capacity as the basis for allocating the charges, and on whether such a scheme would be unduly burdensome on some or all licensees or exemptees. We specifically invite comment from municipal and minor licensees as to whether they have equipment for measuring generation and whether it would be burdensome to report such data to us.

Another alternative that the Commission is considering to simplify the allocation process is to eliminate only the third prong of the formula, and to include minor licensees in the respective allocation formulae for major licensees. In other words, the minor municipal licensees would be included in the same allocation formula with the major municipal licensees, and the minor non-municipal licensees would be included in the same allocation formula with the major non-municipal licensees. The Commission could include exemptees in the same manner. This alternative would preserve the

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[5] Pub. L. No. 99-509, Title III, Subtitle E, sec. 3401 (1986) (codified at 42 U.S.C. 7178). OBRA is implemented in Part 382 of the Commission's Regulations, 18 CFR Part 382.

[6] See Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 5300 (Conference Report), H.R. Rep. No. 1012, 99th Cong., 2d Sess. 238, reprinted in 1986 U.S.C.C.A.N. 3607, 3883.

[7] The procedures for estimating the costs and later adjusting the assessments are described in Order No. 472, 52 FR 18201 (May 14, 1987), FERC Stats. & Regs. (Regulations Preambles 1986-1990) ¶ 30,746 at pp. 30,612 and 30,616-17.

[8] The capacity is currently measured in horsepower, while the generation is measured in kilowatt-hours. The allocation for pumped storage projects is based solely on capacity.

[9] The capacity is currently measured in horsepower.

[10] As noted above, the present allocation formulae were adopted in Order No. 205, 19 F.P.C. 907 (1958) and Order No. 272, 30 F.P.C. 1333 (1963).

[11] See Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, Order No. 472, FERC Stats. & Regs. (Regulations Preambles) ¶ 30,746 at p. 30,610 (1987).

[12] See 18 CFR 380.201. It also contains a comparable provision for allocating annual charges among power marketing agencies.

[13] See 18 CFR 380.202.

[14] See 18 CFR 380.203. As noted below, there is a maximum charge.

existing use of a formula based on a combination of capacity and generation to determine the annual charges for non-municipal licensees, and of a formula based solely on capacity to determine the annual charges for municipal licensees. This alternative would avoid the large increase, both in total dollars and percentage, that major municipal licensees as a group would experience under a single, unified formula.

The Commission could provide a transition period for phasing in the assessments for minor licensees and exemptees. The Commission specifically invites comment from minor licensees and exemptees on whether such a transition period would be helpful or appropriate.

In this regard, the Commission notes that the current system of categorizing municipal and non-municipal projects separately for purposes of annual charges produces a sizeable disparity in the annual charges assessed for projects of comparable size depending on their class of ownership. The disparity is illustrated by the data in the table in Appendix A.

Under the present regulations, and under the currently prevailing facts (which, as discussed below, can be expected to change), the non-municipal licensees are assessed a substantially larger annual charge per kilowatt of capacity than the municipal licensees. This is occurring primarily because the bulk of the Commission's current licensing activities is focused on processing applications for new licenses for projects whose original licensees expired in 1993. Since a disproportionate number of these projects are owned by non-municipal licensees, the effect of segregating out the hours spent on those applications is to allocate more of the annual charges burden to the non-municipal licensees. In other words, non-municipal licensees as a group are paying comparatively higher annual charges today than municipal licensees because at this time the non-municipal licensees, as a group, are imposing comparatively greater regulatory costs.

This is not to suggest, however, that the disproportionate charges are being assessed only to the non-municipal licensees who have filed pending applications for a new license or who are presently involved in compliance proceedings. To the contrary, the annual charge assessments for this work are allocated among all of the non-municipal licensees as a class, and most of those licensees are neither seeking a new license nor involved in a compliance proceeding.

Furthermore, it is reasonable to assume that in some future year the shoe may shift to the other foot. On average, over time, the licenses for municipal projects expire at the same frequency as the licenses for non-municipal projects, and the frequency of compliance proceedings also tends to even out. Thus, given the current concentration of resources on processing cases involving non-municipal projects, it is reasonable to assume that eventually some years will occur in which there will be an equally disproportionate burden of annual charge assessments on municipal projects vis-a-vis non-municipal projects. The net effect of the present categorization of costs according to the municipal/non-municipal status of the project, therefore, is not to permanently favor either one class or the other, but to create swings—both up and down—in the annual charges assessed to the two classes, depending on the particular mix of the Commission's workload in any given year. The Commission welcomes comment on all of these matters.

The Commission recognizes the possibility that the elimination of generation as a factor might have a significant impact on some licensees, and welcomes comment on it. The Commission also recognizes that the charges for minor licensees may increase substantially, but believes that the current charge of five cents per horsepower has been so heavily eroded by inflation since it was adopted in 1963 as to have been rendered comparatively meaningless.

For instance, the table in Appendix A at the end of this NOPR shows the following illustrative examples of increases in annual charges for minor licensees from the 1993 charge to the charge that would result from the amendments described in the Alternative A regulatory text:

Minor licensee	Current method charge	Proposed method charge, fourth year
Town of Rollingsford ...	$100	$1,697
City of Marshall	22	367
City of Lewiston	67	1,134
STS Hydro-power Ltd.	75	1,279
John A. Dodson	5	100

In particular, the Commission welcomes comment on whether there are distinctions between municipal and non-municipal projects that would justify the current difference in their allocation formulae or whether the substantial increases in some licensees' annual charges that would result from eliminating this distinction are reason enough to retain the distinction.

The Commission recognizes that, in the case of major construction projects, the license may be in effect for several years before project construction is commenced and before the project commences operation and goes into service. With respect to non-municipal licensees, annual charges are payable each year from the date of issuance of the license but there is no incoming stream of revenue during those years because no power is being generated. Municipal licensees, on the other hand, do obtain an exemption from annual charges prior to and during the construction period because, since they are not generating power during that period, they are not selling power for profit. This is because § 11.6(g) of the regulations provides a complete exemption from certain annual charges when a municipal project is under construction and not generating power, on the theory that the project is operating without profit within the meaning of the municipal exemption in FPA section 10(e).

Under the various regulatory regimes discussed herein, the Commission would maintain the above-described exemption from annual charges with respect to municipal projects that have not yet commenced commercial operation. In addition, the Commission proposes to include in the assessment formula (whatever it may be) only licensed and exempted projects that have already been constructed or whose construction has commenced. Although framed in terms of all projects, as a practical matter, because of the exemption for municipal projects, the change would primarily affect non-municipal projects.

We believe that commencement of construction is a more appropriate determinant than completion of construction, for two reasons. First of all, the date on which construction commenced is a legally precise, documented date [15-16] whereas the date on which construction is completed is not defined with the same precision. Secondly, it is our understanding that licensees of projects under construction can draw on construction loan funds to pay the annual charges whereas such

[15-16] Section 13 of the FPA requires that the licensee commence construction of the project within fixed time periods after issuance of the license, as specified in section 13 and the license. Thus, the Commission has evolved standards for determining the precise date of commencement of construction, and the hydropower industry is familiar with those standards.

funds may not be available prior to the commencement of construction.

The Commission also proposes to establish a minimum and maximum annual charge. The minimum annual charge would be $100.[17] We believe that $100 is a reasonable charge for a regulated project to pay, to participate in defraying the cost of administration of the hydropower regulatory program, regardless of how small the project's capacity may be.[18]

The Commission also proposes to set a limit on annual charges so that, with respect to costs incurred by the Commission, no licensee's project would be required to pay more than 2.0 percent of the total costs. We believe that a maximum charge is appropriate to avoid having a small number of projects bearing most of the Commission's costs of administration. The proposed limit is modelled after the formula in § 382.203(b) with respect to annual charges for oil pipelines. The maximum annual charge stated therein is 6.339 percent of the total charges, but that figure is based on a much smaller number of significant entities (interstate oil pipelines) sharing a much smaller total cost.

With respect to a minimum charge, other alternatives would be to waive charges below a fixed dollar amount or below a fixed capacity. With respect to a maximum charge, different percentages could be used for the ceiling. If the formula were to be based solely on capacity, another alternative would be to have a 50 percent discount for all authorized capacity above a prescribed ceiling (e.g., 500 megawatts). In this example, if a project had an authorized capacity of 1000 megawatts, it would be counted in the apportionment formula as 750 megawatts (all of the first 500 megawatts plus half of the second 500 megawatts). The Commission invites comments on these and other potential alternatives.

The Commission notes that adoption of some of the alternatives discussed herein might increase the annual charges for certain pumped storage projects. Nevertheless there are other features (such as the start-of-construction date and the maximum charge) that would benefit some pumped storage projects, to the extent that large pumped storage projects have extended design and construction periods and comparatively massive capacity.

We have included in this notice of proposed rulemaking two alternative examples of the regulatory text that might be used to implement the various alternative proposals discussed herein. The "Alternative A" regulatory text is based on the allocation of all of the annual charges among a single class of licensees and exemptees, including all major and minor municipal and non-municipal licensees and all exemptees. The allocation is based solely on the respective capacity of each hydropower project as measured in kilowatts.

The "Alternative B" regulatory text retains the current separate categories and formulae for major municipal and non-municipal licensees. Minor licensees and exemptees would be classified with the comparable groups of major licensees and their charges would be assessed pursuant to the formulae currently used for those groups.

Both the "Alternative A" and "Alternative B" regulatory texts implement a minimum charge of $100 and a maximum charge of two percent of the total of all charges. Under both alternatives, assessments would not commence prior to the commencement of project construction.[19]

B. Transition Arrangements

While the Commission believes that many of the regulatory amendments discussed above would in the long run render the regulations more rational and more fair and equitable, the Commission also recognizes that if these amendments were to be adopted en masse at a single stroke they might impose significant unanticipated burdens on some licensees and exemptees. Therefore, the Commission proposes a three-year transition period for phasing-in some of the changes it might adopt, particularly with respect to the changes described in the "Alternative A" regulatory text.

Charges during the transition described therein would be calculated by the following steps. First, the difference between a project's charge using the current method and the proposed method would be divided into fourths. The charge for the first transition year would be the current method charge plus the one-fourth increment. (If the charge is reduced in going from the current method to the proposed method, the one-fourth increment would be subtracted.)[20] The charge for the second transition year would be the current method charge plus (or minus) the two-fourths increment. The charge for the third transition year would be the current method charge plus (or minus) the three-fourths increment. The charge for the fourth year would be calculated solely by the proposed method.

The charges in all of these transition years, however, would be subject to the proposed minimum and maximum charges.[21] In addition, in all of these transition years, charges would be assessed only with respect to hydropower projects that have been constructed or whose construction has commenced.[22]

Finally, as discussed above, if the major changes have their most significant impact only on minor licensees and exemptees, a transition period could be established solely for those entities.

C. From Horsepower to Kilowatts

As discussed above, the existing regulations at § 11.1 provide different allocation formulae for municipal and non-municipal projects of more than 2,000 horsepower of installed capacity. Both formulae, however, take into account a project's authorized installed capacity defined in terms of horsepower.

The computation of a project's capacity in terms of horsepower likely arose in the earlier years of the Commission's regulatory oversight, when the then-existing projects included a greater percentage of hydromechanical equipment.[23] Today,

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[17] Under certain circumstances (e.g., commencement of construction, or transfer or termination of a license during a fiscal year) the minimum charge would be prorated.

[18] In the event that a municipal licensee was entitled to a partial exemption from annual charges, the exemption could reduce its charge below the $100 minimum.

[19] Attached to this NOPR as Appendices A, B and C are three tables prepared by the Commission's staff which shows the impact that some of the ideas discussed herein might have on the annual charges of representative licensees and exemptees.

[20] In order to avoid any net increase or decrease in the total of all charges assessed in any single year, the total amount of the reductions in the charges must be matched by an equal amount of "increases" in charges. The "increases," however, would in fact simply be a partial elimination of a reduction that would otherwise occur—to balance the elimination of part of an actual increase elsewhere that would otherwise occur.

[21] Thus, even during the transition period the minimum charge would be $100 and the maximum charge would not exceed two percent of the total of all charges assessed. See Appendices A and B for illustrative examples.

[22] The regulatory amendments proposed herein are intended to be purely prospective in nature. Thus, to the extent that any licensee has obtained approval for an installment or deferred payment plan, the amendments, if adopted, would not extinguish that licensee's responsibility to pay whatever amounts were assessed under the existing regulations even if such amounts have been deferred for later payment.

[23] In other words, horsepower was a convenient measure for comparing the capacity of hydropower projects, some of which generated electricity and some which did not. In rough terms, horsepower measures the weight that an average draft horse can pull in a circular path around a rotary grinder. The

Continued

however, the determination of a hydroelectric project's authorized capacity is generally stated in terms of kilowatts; that is the manner in which authorized capacity is stated in the licenses.[24] In fact, the Commission's staff determines a project's horsepower capacity by converting kilowatts into horsepower. Therefore, the Commission proposes to revise § 11.1 to substitute kilowatts for horsepower in stating a project's authorized installed capacity.

For the few licensed hydromechanical projects, all of which are quite small, the Commission would impute a kilowatt figure by multiplying these projects' existing horsepower capacity by three-fourths. We believe that using kilowatts as the standard and converting the few hydromechanical project capacities into an imputed kilowatt capacity is far easier than converting all of the hydroelectric project capacities from kilowatts to horsepower.

D. The Determination of Authorized Installed Capacity

Questions have occasionally arisen as to how to define "authorized installed capacity." What if the capacity of the generator exceeds the capacity of the turbine? What if the available stream flow is insufficient to fully utilize the capacity of the turbine and generator installed in the project?[25]

The Commission proposes to take this occasion to clarify the concept of "authorized installed capacity" by defining it. The authorized installed capacity would be expressed in kilowatts, and would be the lesser of the capacity of the generator or the turbine. Thus, if the capacity of the generator exceeded the capacity of the turbine, then the capacity of the turbine would apply, and vice-versa. The availability of stream flow, however, would not be considered.[26]

The capacity would be based on the actual power of the equipment in question without regard to whatever "nameplate" rating might be physically affixed to the unit (although, with respect to a new or unmodified unit, the "nameplate rating" may well coincide with the definition proposed herein). If the generator or turbine are subsequently modified, such as by rewinding the generator, the capacity would be recalculated accordingly.

We believe that the proposed definition provides a means of determining capacity that is both workable and fair. The capacity of the generator and the turbine are reasonably ascertainable, and do not involve the potential complexities and controversies inherent in determining the availability of usable stream flow. If a project operator, for whatever reason, chose to purchase, install or operate equipment whose capacity exceeded the available stream flow needed to operate it, the operator would have to accept the consequence of having that equipment's capacity used as the basis for determining the project's annual charges.

E. The Five Megawatt and Conduit Exemption Costs

Section 30 of the FPA[27] provides that the Commission may exempt from the FPA's licensing provisions any facility (other than a dam, and within certain megawatt limits) which is constructed or operated to generate electric power, if the facility is located on non-federal land and "utilizes for such generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity."

Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (PURPA), as amended by section 408 of the Energy Security Act of 1980,[28] provide that the Commission may exempt from the FPA's licensing requirements small hydroelectric power projects that are located at the site of an existing dam (or utilize natural water features without the need for a dam) and that have a proposed installed capacity of five megawatts (MW) or less.

The Commission's staff, however, performs similar safety and environmental compliance functions with respect to hydroelectric projects that are operated pursuant to a 5 MW or conduit exemption as it does for projects that are operated pursuant to a license. The Commission also incurs costs in processing exemption applications. Therefore, as a matter of policy, the Commission believes that it would be appropriate for projects that are operated pursuant to the 5 MW exemption to share the cost of the Commission's application and compliance programs, and that the same principle applies as well with respect to conduit exemptions.

Section 10(e) of the FPA provides that "the licensee shall pay * * * annual charges * * * for the costs of the administration of this Part * * *" (emphasis added). We believe that this statutory language may preclude imposition of annual charges on 5 MW and conduit exemptees under section 10(e) of the FPA. It is arguable that such exemptees could not be construed as "licensees" within the meaning of section 10(e). The Commission believes, however, that it has the legal authority under OBRA to assess annual charges to exemptees,[29] and proposes to do so with respect to both the 5 MW and the conduit exemptions.[30]

Finally, pursuant to § 381.601, the Commission currently imposes a filing fee for applications for a 5 MW exemption. The fee is based on the cost of processing all 5 MW exemption applications received each year divided by the number of applications that the Commission has completed processing in that year. At present, the fee established by § 381.601 is $21,620. Because the Commission is proposing to assess annual charges on 5 MW exemptees, the Commission proposes to delete § 381.601 from the regulations.[31]

F. Other Revisions to Annual Charges

Section 11.1(d) currently states that the minimum annual charge for projects

common definition in the United States is that one horsepower is equal to 550 foot-pounds per second or approximately 746 watts.

[24] The exception is that the license article on annual charges states the capacity in horsepower.

[25] Such situations might arise, for instance, if it were cheaper for a project operator to purchase an "off-the-shelf" or a used generator whose capacity exceeded the capacity of the turbine or the stream flow available at the project site.

[26] The proposed rule would codify the policy articulated in Public Utility District No. 2 of Grant County, Washington, 62 FERC ¶ 61,229 (1993).

[27] 18 U.S.C. 823a.

[28] 16 U.S.C. 2708.

[29] Section 3401(a) of OBRA provides as follows:

(a) In General.—(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this subtitle and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) the provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act.

Whereas this provision makes clear that OBRA does not authorize the collection of annual charges from, *e.g.*, municipal licensees who qualify for an exemption under the terms of section 10(e) of the Federal Power Act, projects under exemptions from licensing are not subject to section 10(e), and therefore charging them under OBRA does not affect any provision of section 10(e).

Section 30(e) of the Federal Power Act requires the Commission to collect from exemption applicants and certain license applicants, on behalf of the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and state fish and wildlife agencies, these agencies' project-specific costs under section 30(c) (establishment of mandatory conditions with respect to fish and wildlife resources). These agencies are required to subtract from their section 10(e) claims the money they recover under section 30(e).

[30] Holders of 5 MW and conduit exemptions would, however, be able to apply for exemption from annual charges based on their municipal status.

[31] The Commission does not impose a filing fee for conduit exemptions.

involving transmission lines will be $5. The Commission's current practice, however, is to state that charge in the articles of the individual licenses, as appropriate. Therefore, we propose to conform the text of § 11.1(d) to that practice.

In its current form, § 11.20 provides two separate deadlines for payment of bills for annual charges: 30 days for headwater benefits bills and 45 days for other annual charges bills. The purpose of this distinction is not readily apparent. Therefore, the Commission proposes to make all such bills payable upon 30 days of their rendition.

There has also been some confusion over the procedures that a licensee should follow if it believes that the bill is incorrect. The proposed new § 11.20 provides for licensees to file an appeal of the bill to the Commission's Chief Financial Officer. All decisions of the Chief Financial Officer on appeals would be subject to rehearing by the Commission pursuant to § 385.713. This would essentially codify the current informal practice. Most billing disputes involve mathematical calculations that can be readily resolved by discussion with the Commission's staff without the need for a formal request to the Commission for rehearing.

The bill would still have to be paid within 30 days of its rendition in order to avoid the assessment of penalty payments under § 11.21, but if a timely appeal or request for rehearing is filed the bill could be paid under protest and subject to refund. This provision would codify the Commission's current practice.

As currently in effect, § 11.6(i) requires that applications for exemptions from payment of annual charges "shall be prepared on forms prescribed by the Commission * * *." Inasmuch as the Commission does not currently prescribe such forms, the reference to such forms will be deleted.

We also propose to add a sentence at the end of § 11.6(i) to clarify that bills for annual charges can be paid under protest and subject to refund in the event that an application for an exemption from payment is pending when the bill becomes payable. This provision would codify the Commission's current practice.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[32] generally requires a description and analysis of proposed regulations that will have a significant economic impact on a substantial number of small entities.[33] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

Issuance of this notice of proposed rulemaking does not constitute a major federal action having a significant adverse impact on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act.[34] The regulations proposed herein are procedural in nature and therefore fall within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[35]

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations at 5 CFR 1320.13 require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements that would be deleted by this proposed rule are contained in FERC–583 "Annual Kilowatt Generating Report (Annual Charges)" (1902–0136). The Commission's Financial Services Division uses the data for determination of the amount of annual charges to be assessed licensees for reimbursable government administrative costs. If the amendments proposed herein are adopted, the Commission would submit to the OMB a notification that these collections of information have been modified.

Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

VIII. Public Comment Procedures

The Commission invites all interested persons to submit written comments on the matters discussed in this notice of proposed rulemaking. An original and 14 copies of the written comments must be filed with the Commission April 4, 1994. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, during regular business hours, and should refer to Docket No. RM93–7–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, room 3104, 941 North Capitol Street North East, Washington, DC 20426 during regular business hours.

List of Subjects

18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission invites comment on the potential amendments to 18 CFR parts 11 and 381 that are set forth below in two alternative versions (styled as "Alternative A" and "Alternative B"), and also invites comments on any other potential alternatives.

Lois D. Cashell,

Secretary.

For the reasons set out in the preamble, 18 CFR parts 11 and 381 are proposed to be amended in the alternative as follows:

Alternative A

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for Part ll continues to read as follows:

Authority: 16 U.S.C. 791a-825r; 42 U.S.C. 7101–7352.

2. Section 11.1 is revised to read as follows:

§ 11.1 Costs of administration.

(a) *Authority.* Pursuant to section 10(e) of the Federal Power Act and section 3401 of the Omnibus Budget Reconciliation Act of 1986, the Commission will assess reasonable annual charges against licensees and exemptees to reimburse the United States for the costs of administration of the Commission's hydropower regulatory program.

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[32] 5 U.S.C. 601–612.

[33] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[34] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[35] See 18 CFR 380.4(a)(1).

(b) *Scope.* The annual charges under this section will be charged to and allocated among:

(1) all licensees;

(2) all holders of exemptions under section 30 of the Federal Power Act; and

(3) all holders of exemptions under sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, as amended by section 408 of the Energy Security Act of 1980.

(c) *Formula.* A determination shall be made for each fiscal year of the costs of administration of Part I of the Federal Power Act, from which shall be deducted administrative costs fixed in the licenses and exemptions and those fixed by the Commission in determining headwater benefit payments. For each fiscal year, the costs of administration will be assessed against each licensee and exemptee in the proportion that the annual charge factor for each such project bears to the total of the annual charge factors under all such outstanding licenses and exemptions. The annual charge factor for each such project shall be its authorized installed capacity as measured in kilowatts. The assessments will include all such licensed and exempted projects that have been constructed, and all such licensed and exempted projects whose construction has been commenced. In the event that construction commences during a fiscal year, the charges will be prorated based on the day on which construction commenced.

(d) *Municipal exemptions.* (1) To enable the Commission to compute on the bill for annual charges the exemption to which State and municipal licensees and exemptees are entitled because of the use of power by the licensee or exemptees for State or municipal purposes, each such licensee or exemptee must file with the Commission, on or before November 1 of each year, a statement under oath showing the following information with respect to the power generated by the project and the disposition thereof during the preceding fiscal year, expressed in kilowatt-hours:

(i) Gross amount of power generated by the project.

(ii) Amount of power used for station purposes and lost in transmission, etc.

(iii) Net amount of power available for sale or use by licensee or exemptee, classified as follows:

(A) Used by licensee or exemptee.

(B) Sold by licensee or exemptee.

(2) When the power from a licensed or exempted project owned by a State or municipality enters into its electric system, making it impracticable to meet the requirements of this section with respect to the disposition of project power, such licensee or exemptee may, in lieu thereof, furnish similar information with respect to the disposition of the available power of the entire electric system of the licensee or exemptee.

(e) *Transmission lines.* For projects involving transmission lines only, the administrative charge will be stated in the license.

(f) *Minimum and maximum charges.* (1) The minimum annual charge under this section will be $100 per year for each licensed or exempted project, subject to reduction based on partial or total exemption pursuant to paragraph (d) of this section.

(2) No licensed or exempted project's annual charge may exceed a maximum charge established each year by the Commission to equal 2.0 percent of the adjusted costs of administration of the hydropower regulatory program. For every project with an annual charge determined to be above the maximum charge, that project's annual charge will be set at the maximum charge, and any amount above the maximum charge will be reapportioned to the remaining projects. The reapportionment will be computed using the method outlined in paragraph (c) of this section (but excluding any project whose annual charge is already set at the maximum amount). This procedure will be repeated until no project's annual charge exceeds the maximum charge.

(g) *Commission's costs.* (1) With respect to costs incurred by the Commission, the assessment of annual charges will be based on an estimate of the costs of administration of Part I of the Federal Power Act that will be incurred during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment will be recalculated based on the costs of administration that were actually incurred during that fiscal year; the actual costs will be compared to the estimated costs; and the difference between the actual and estimated costs will be carried over as an adjustment to the assessment for the subsequent fiscal year.

(2) The issuance of bills based on the administrative costs incurred by the Commission during the year in which the bill is issued will commence in 1993. The annual charge for the administrative costs that were incurred in fiscal year 1992 will be billed in 1994. At the licensee's option, the charge may be paid in three equal annual installments in fiscal years 1994, 1995, and 1996, plus any accrued interest. If the licensee elects the three-year installment plan, the Commission will accrue interest (at the most recent yield of two-year Treasury securities) on the unpaid charges and add the accrued interest to the installments billed in fiscal years 1995 and 1996.

(h) In making their annual reports to the Commission on their costs in administering Part I of the Federal Power Act, the United States Fish and Wildlife Service and the National Marine Fisheries Service are to deduct any amounts that were deposited into their Treasury accounts during that year as reimbursements for conducting studies and reviews pursuant to section 30(e) of the Federal Power Act.

(i) *Definition.* As used in paragraph (c) of this section, *authorized installed capacity* means the lesser of the ratings of the generator or turbine units. The rating of a generator is the product of the continuous-load capacity rating of the generator in kilovolt-amperes (kVA) and the system power factor in kW/kVA. If the licensee or exemptee does not know its power factor, a factor of 1.0 kW/kVA will be used. The rating of a turbine is the product of the turbine's capacity in horsepower (hp) at maximum head gate opening under the manufacturer's rating head times a conversion factor of 0.75 kW/hp. If the generator or turbine installed has a rating different from that authorized in the license or exemption, or the installed generator is rewound or otherwise modified to change its rating, or the turbine is modified to change its rating, the licensee or exemptee must apply to the Commission to amend its authorized installed capacity to reflect the change.

(j) *Transition rules.* (1) For a license having the capacity of the project for annual charge purposes stated in horsepower, that capacity shall be deemed to be the capacity stated in kilowatts elsewhere in the license, including any amendments thereto.

(2) During the first three fiscal years in which annual charges are assessed after [INSERT DATE ON WHICH THE FINAL RULE BECOMES EFFECTIVE], the annual charges will be determined as follows. The assessments will include (and be limited to) all licenses and exempted projects that have been constructed or whose construction has been commenced, and will be subject to the minimum and maximum charges specified in paragraph (f) of this section. Subject to those parameters, the Commission will determine the charge that would have been assessed pursuant to the regulations in effect prior to [INSERT DATE ON WHICH THE FINAL RULE BECOMES EFFECTIVE], the charge that would have been assessed pursuant to the regulations in effect subsequent to that date, and the

difference between those two assessments. In the first fiscal year after [INSERT DATE ON WHICH THE FINAL RULE BECOMES EFFECTIVE], the Commission will adjust the assessment that would otherwise be payable under the regulations in effect after that date by an amount equal to 75 percent of the difference between the amount that would have been payable under the regulations that were previously in effect and the amount that would have been payable under those regulations after they were amended. In the second fiscal year after [INSERT DATE ON WHICH THE FINAL RULE BECOMES EFFECTIVE], the Commission will adjust the assessment by 50 percent of that difference. In the third fiscal year after [INSERT DATE ON WHICH THE FINAL RULE BECOMES EFFECTIVE], the Commission will adjust the assessment by 25 percent of the difference.

3. In § 11.6, the title, the introductory sentence of paragraph (a), and paragraph (i), are revised, and the cross-reference at the end of the section is removed, to read as follows:

§ 11.6 Exemption of State and municipal licensees and exemptees.

(a) *Bases for exemption.* A State or municipal licensee or exemptee may claim total or partial exemption from the assessment of annual charges upon one or more of the following grounds:

* * * * *

(i) *Application for exemption.* Applications for exemption from payment of annual charges shall be signed by an authorized executive officer or chief accounting officer of the licensee or exemptee and verified under oath. An original and three copies of such application shall be filed with the Commission within the time allowed (by § 11.28) for the payment of the annual charges. If the licensee or exemptee, within the time allowed for the payment of the annual charges, files notice that it intends to file an application for exemption, an additional period of 30 days is allowed within which to complete and file the application for exemption. The filing of an application for exemption does not by itself alleviate the requirement to pay the annual charges, nor does it exonerate the licensee or exemptee from the assessment of penalties under § 11.21. If a bill for annual charges becomes payable after an application for an exemption has been filed and while the application is still pending for decision, the bill may be paid under protest and subject to refund.

4. Section 11.20 is revised to read as follows:

§ 11.20 Time for payment.

Annual charges must be paid no later than 30 days after rendition of a bill by the Commission. If the licensee or exemptee believes that the bill is incorrect, no later than 30 days after its rendition the licensee or exemptee may file an appeal of the bill with the Chief Financial Officer. No later than 30 days after the date of issuance of the Chief Financial Officer's decision on the appeal, the licensee or exemptee may file a request for rehearing of that decision pursuant to § 385.713 of this chapter. In the event that a timely appeal to the Chief Financial Officer or a timely request to the Commission for rehearing is filed, the payment of the bill may be made under protest, and subject to refund pending the outcome of the appeal or rehearing.

PART 381—FEES

5. The authority citation for part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; and 49 U.S.C. 1–27.

§ 381.601 [Removed]

6. Section 381.601 is removed, and subpart F is reserved.

Alternative B

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. Section 11.1 is revised to read as follows:

§ 11.1 Costs of administration.

(a) *Authority.* Pursuant to section 10(e) of the Federal Power Act and section 3401 of the Omnibus Budget Reconciliation Act of 1986, the Commission will assess reasonable annual charges against licensees and exemptees to reimburse the United States for the costs of administration of the Commission's hydropower regulatory program.

(b) *Scope.* The annual charges under this section will be charged to and allocated among:

(1) All licensees;

(2) All holders of exemptions under section 30 of the Federal Power Act; and

(3) All holders of exemptions under sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, as amended by section 408 of the Energy Security Act of 1980. The assessments will include all such licensed and exempted projects that have been constructed, and all such licensed and exempted projects whose construction has been commenced. In the event that construction commences during a fiscal year, the charges will be prorated based on the day on which construction commenced.

(c) *Licenses and exemptions other than State or municipal.* For licensees and exemptees, other than State or municipal:

(1) A determination shall be made for each fiscal year of the costs of administration of Part I of the Federal Power Act chargeable to such licensees or exemptees, from which shall be deducted any administrative costs that are stated in the license or exemption or fixed by the Commission in determining headwater benefit payments.

(2) For each fiscal year the costs of administration determined under paragraph (c)(1) of this section will be assessed against such licensee or exemptee in the proportion that the annual charge factor for each such project bears to the total of the annual charge factors under all such outstanding licenses and exemptions.

(3) The annual charge factor for each such project shall be found as follows:

(i) For a conventional project the factor is its authorized installed capacity plus 150 times its annual energy output in millions of kilowatt-hours.

(ii) For a pure pumped storage project the factor is its authorized installed capacity.

(iii) For a mixed conventional-pumped storage project the factor is its authorized installed capacity plus 150 times its gross annual energy output in millions of kilowatt-hours less 100 times the annual energy used for pumped storage pumping in millions of kilowatt-hours.

(iv) For purposes of determining their annual charges factor, projects that are operated pursuant to an exemption or whose authorized installed capacity does not exceed 1.5 megawatts will be deemed to have an annual energy output of zero.

(4) To enable the Commission to determine such charges annually, each licensee whose authorized installed capacity exceeds 1.5 megawatts must file with the Commission, on or before November 1 of each year, a statement under oath showing the gross amount of power generated (or produced by nonelectrical equipment) and the amount of power used for pumped storage pumping by the project during the preceding fiscal year, expressed in kilowatt hours. If any licensee does not report the gross energy output of its project within the time specified above, the Commission's staff will estimate the

energy output and this estimate may be used in lieu of the filings required by this section made by such licensee after November 1.

(d) *State and municipal licensees and exemptees.* For State or municipal licensees and exemptees:

(1) A determination shall be made for each fiscal year of the cost of administration under Part I of the Federal Power Act chargeable to such licensees and exemptees, from which shall be deducted any administrative costs that are stated in the license or exemption or that are fixed by the Commission in determining headwater benefit payments.

(2) An exemption will be granted to a licensee or exemptee to the extent, if any, to which it may be entitled under section 10(e) of the Act provided the data is submitted as requested in paragraphs (d) (4) and (5) of this section.

(3) For each fiscal year the total actual cost of administration as determined under paragraph (d)(1) of this section will be assessed against each such licensee or exemptee (except to the extent of the exemptions granted pursuant to paragraph (d)(2) of this section) in the proportion that the authorized installed capacity of each such project bears to the total such capacity under all such outstanding licenses or exemptions.

(4) To enable the Commission to compute on the bill for annual charges the exemption to which State and municipal licensees and exemptees are entitled because of the use of power by the licensee or exemptees for State or municipal purposes, each such licensee or exemptee must file with the Commission, on or before November 1 of each year, a statement under oath showing the following information with respect to the power generated by the project and the disposition thereof during the preceding fiscal year, expressed in kilowatt-hours:

(i) Gross amount of power generated by the project.

(ii) Amount of power used for station purposes and lost in transmission, etc.

(iii) Net amount of power available for sale or use by licensee or exemptee, classified as follows:

(A) Used by licensee or exemptee.

(B) Sold by licensee or exemptee.

(5) When the power from a licensed or exempted project owned by a State or municipality enters into its electric system, making it impracticable to meet the requirements of this section with respect to the disposition of project power, such licensee or exemptee may, in lieu thereof, furnish similar information with respect to the disposition of the available power of the entire electric system of the licensee or exemptee.

(e) *Transmission lines.* For projects involving transmission lines only, the administrative charge will be stated in the license.

(f) *Minimum and maximum charges.* (1) The minimum annual charge under this section will be $100 per year for each licensed or exempted project, subject to reduction based on partial or total exemption pursuant to paragraph (d)(4) of this section.

(2) No licensed or exempted project's annual charge may exceed a maximum charge established each year by the Commission to equal 2.0 percent of the adjusted costs of administration of the hydropower regulatory program. For every project with an annual charge determined to be above the maximum charge, that project's annual charge will be set at the maximum charge, and any amount above the maximum charge will be reapportioned to the remaining projects. The reapportionment will be computed using the method outlined in paragraphs (c) and (d) of this section (but excluding any project whose annual charge is already set at the maximum amount). This procedure will be repeated until no project's annual charge exceeds the maximum charge.

(g) *Commission's costs.* (1) With respect to costs incurred by the Commission, the assessment of annual charges will be based on an estimate of the costs of administration of Part I of the Federal Power Act that will be incurred during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment will be recalculated based on the costs of administration that were actually incurred during that fiscal year; the actual costs will be compared to the estimated costs; and the difference between the actual and estimated costs will be carried over as an adjustment to the assessment for the subsequent fiscal year.

(2) The issuance of bills based on the administrative costs incurred by the Commission during the year in which the bill is issued will commence in 1993. The annual charge for the administrative costs that were incurred in fiscal year 1992 will be billed in 1994. At the licensee's option, the charge may be paid in three equal annual installments in fiscal years 1994, 1995, and 1996, plus any accrued interest. If the licensee elects the three-year installment plan, the Commission will accrue interest (at the most recent yield of two-year Treasury securities) on the unpaid charges and add the accrued interest to the installments billed in fiscal years 1995 and 1996.

(h) In making their annual reports to the Commission on their costs in administering Part I of the Federal Power Act, the United States Fish and Wildlife Service and the National Marine Fisheries Service are to deduct any amounts that were deposited into their Treasury accounts during that year as reimbursements for conducting studies and reviews pursuant to section 30(e) of the Federal Power Act.

(i) *Definition.* As used in paragraph (c) of this section, "authorized installed capacity" means the lesser of the ratings of the generator or turbine units. The rating of a generator is the product of the continuous-load capacity rating of the generator in kilovolt-amperes (kVA) and the system power factor in kW/kVA. If the licensee or exemptee does not know its power factor, a factor of 1.0 kW/kVA will be used. The rating of a turbine is the product of the turbine's capacity in horsepower (hp) at maximum head gate opening under the manufacturer's rating head times a conversion factor of 0.75 kW/hp. If the generator or turbine installed has a rating different from that authorized in the license or exemption, or the installed generator is rewound or otherwise modified to change its rating, or the turbine is modified to change its rating, the licensee or exemptee must apply to the Commission to amend its authorized installed capacity to reflect the change.

(j) *Transition.* For a license having the capacity of the project for annual charge purposes stated in horsepower, that capacity shall be deemed to be the capacity stated in kilowatts elsewhere in the license, including any amendments thereto.

3. In § 11.6, the title, the introductory sentence of paragraph (a), and paragraph (i), are revised, and the cross-reference at the end of the section is removed, to read as follows:

§ 11.6 Exemption of State and municipal licensees and exemptees.

(a) *Bases for exemption.* A State or municipal licensee or exemptee may claim total or partial exemption from the assessment of annual charges upon one or more of the following grounds:

* * * * *

(i) *Application for exemption.* Applications for exemption from payment of annual charges shall be signed by an authorized executive officer or chief accounting officer of the licensee or exemptee and verified under oath. An original and three copies of such application shall be filed with the Commission within the time allowed (by § 11.28) for the payment of the annual charges. If the licensee or

exemptee, within the time allowed for the payment of the annual charges, files notice that it intends to file an application for exemption, an additional period of 30 days is allowed within which to complete and file the application for exemption. The filing of an application for exemption does not by itself alleviate the requirement to pay the annual charges, nor does it exonerate the licensee or exemptee from the assessment of penalties under § 11.21. If a bill for annual charges becomes payable after an application for an exemption has been filed and while the application is still pending for decision, the bill may be paid under protest and subject to refund.

4. Section 11.20 is revised to read as follows:

§ 11.20 Time for payment.

Annual charges must be paid no later than 30 days after rendition of a bill by the Commission. If the licensee or exemptee believes that the bill is incorrect, no later than 30 days after its rendition the licensee or exemptee may file an appeal of the bill with the Chief Financial Officer. No later than 30 days after the date of issuance of the Chief Financial Officer's decision on the appeal, the licensee or exemptee may file a request for rehearing of that decision pursuant to § 385.713 of this chapter. In the event that a timely appeal to the Chief Financial Officer or a timely request to the Commission for rehearing is filed, the payment of the bill may be made under protest, and subject to refund pending the outcome of the appeal or rehearing.

PART 381—FEES

5. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; and 49 U.S.C. 1–27.

§ 381.601 [Removed]

6. Section 381.601 is removed, and subpart F is reserved.

Appendix A

Note: This Appendix will not be published in the Code of Federal Regulations.

The table in Appendix A shows illustrative annual charges for representative municipal and non-municipal licensees and exemptees. It is based on the regulatory scheme described in the Alternative A regulatory text at the end of the NOPR. Thus, the table is based on allocation of all of the annual charges among a single class of licensees and exemptees, including all major and minor municipal and non-municipal licensees and all exemptees. The allocation is based solely on the respective capacity of each hydropower project as measured in kilowatts, with a minimum charge of $100 and a maximum charge of two percent of the total of all charges. Assessments would not commence prior to the commencement of project construction. Finally, the table reflects the charges as they would become due over a three-year phase-in period.

FY 1993 ANNUAL CHARGES

Project ID and company name	KW authorized	Current method charge	Proposed method charge			
			Year 1	Year 2	Year 3	Year 4
Exemptions:						
06375 Heed Co. Inc	116	0	100	100	100	100
08732 Manassas, City of	1,200	0	400	700	1,100	1,400
10113 Perpetual Storage, Inc	5,000	0	1,600	3,000	4,400	5,700
Major Municipal Licenses:						
02183 Grand River Dam Authority	99,750	62,000	84,000	95,000	104,000	113,000
02216 Power Auth. of the State of New York	2,815,500	1,361,000	1,027,000	1,027,000	1,027,000	1,027,000
02246 Yuba County Water Agency	361,875	225,000	305,000	343,000	379,000	411,000
Major Non-Municipal Licenses:						
01025 Safe Harbor Water Power Corp	424,650	504,000	560,000	533,000	507,000	483,000
01390 Southern California Edison Co	3,015	3,600	4,000	3,800	3,600	3,400
01971 Idaho Power Company	1,166,925	1,474,000	1,027,000	1,027,000	1,027,000	1,027,000
02071 Pacificorp DBA Utah Power & Light	105,000	146,000	156,000	143,000	131,000	119,000
02408 Alabama Power Co	57,975	81,000	87,000	79,000	72,000	66,000
Minor Municipal Licenses:						
03777 Rollingsford, Town of (NH)	1,493	100	600	1,000	1,300	1,700
06514 Marshall, City of (MI)	323	22	100	200	300	400
11006 Lewiston, City of (ME)	998	67	400	600	900	1,100
Minor Non-Municipal Licenses:						
07242 STS Hydropower, Ltd	1,125	75	400	700	1,000	1,300
07656 Dodson, John A	75	5	100	100	100	100
Pure Pumped Storage Licenses:						
02355 Philadelphia Electric Company	800,250	763,000	898,000	903,000	906,000	910,000
02716 Virginia Electric and Power Company	2,100,000	2,002,000	1,027,000	1,027,000	1,027,000	1,027,000
02735 Pacific Gas & Electric Company	1,050,000	1,001,000	1,027,000	1,027,000	1,027,000	1,027,000
09423 Summit Energy Storage, Inc	1,500,000	1,430,000	0	0	0	0

Notes:
—The maximum charge under "Proposed Method Charge" is $1,027,000.
—This table addresses only the Commission's portion of the administrative annual charge statement. In FY 1993, an additional 7.5% was billed by the Commission for other agencies' administrative costs.

Appendix B

Note: This Appendix will not be published in the Code of Federal Regulations.

The table in Appendix B shows illustrative annual charges for representative municipal and non-municipal licensees and exemptees based on the regulatory scheme described in the Alternative B

regulatory text at the end of the NOPR. Thus, the table retains the current separate categories and formulae for major municipal and non-municipal licensees. Minor licensees and exemptees are classified with the comparable groups of major licensees and their charges are assessed pursuant to the formulae currently used for those groups.

FY 1993 ANNUAL CHARGES

Project ID and company name	KW authorized	Current method charge	Proposed method charge
Exemptions:			
06375 Heed Co. Inc.	116	0	100
08732 Manassas, City of	1,200	0	700
10113 Perpetual Storage, Inc.	5,000	0	5,300
Major Municipal Licenses:			
02183 Grand River Dam Authority	99,750	62,000	61,000
02216 Power Auth of the State of New York	2,815,500	1,361,000	1,027,000
02246 Yuba County Water Agency	361,875	225,000	220,000
Major Non-Municipal Licenses:			
01025 Safe Harbor Water Power Corp	424,650	504,000	595,000
01390 Southern California Edison Co.	3,015	3,600	4,000
01971 Idaho Power Company	1,166,925	1,474,000	1,027,000
02071 Pacificorp DBA Utah Power & Light	105,000	146,000	178,000
02408 Alabama Power Co.	57,975	81,000	99,000
Minor Municipal Licenses:			
03777 Rollingsford, Town of (NH)	1,493	100	900
06514 Marshall, City of (MI)	323	22	200
11006 Lewiston, City of (ME)	998	67	600
Minor Non-Municipal Licenses:			
07242 STS Hydropower, Ltd.	1,125	75	1,200
07656 Dodson, John A.	75	5	100
Pure Pumped Storage Licenses:			
02355 Philadelphia Electric Company	800,250	763,000	845,000
02716 Virginia Electric and Power Company	2,100,000	2,002,000	1,027,000
02735 Pacific Gas & Electric Company	1,050,000	1,001,000	1,027,000
09423 Summit Energy Storage, Inc.	1,500,000	1,430,000	0

Notes:
—The maximum charge under "Proposed Method Charge" is $1,027,000.
—This table addresses only the Commission's portion of the administrative annual charge statement. In FY 1993, an additional 7.5% was billed by the Commission for other agencies' administrative costs.

Appendix C

Note: This Appendix will not be published in the Code of Federal Regulations.

The table in Appendix C shows the approximate amounts currently assessed to certain categories of licensees and exemptees, the estimated amounts that would be assessed under the methodology applied in Appendix A, and the estimated amounts that would be assessed under the methodology applied in Appendix B.

TOTALS BY ALTERNATIVE AND CATEGORY—APPENDIX A

	Adm Assessed	Year 1	Year 2	Year 3	Year 4	Appendix B
Exemption	0	200,000	400,000	600,000	800,000	600,000
Maj Muni Lic	8,600,000	10,700,000	11,700,000	12,700,000	13,500,000	8,300,000
Min Muni Lic	3,000	16,000	27,000	37,000	47,000	25,000
Maj NonMuni Lic	24,600,000	25,600,000	24,000,000	22,400,000	20,900,000	28,200,000
Min NonMuni Lic	13,600	69,000	116,000	160,000	202,000	187,000
Pure Pumped Sto	13,400,000	9,300,000	9,300,000	9,300,000	9,300,000	9,000,000
Mixed PS/conv	3,000,000	3,500,000	3,500,000	3,600,000	3,600,000	3,200,000

[FR Doc. 94-2318 Filed 2-1-94; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 164

[Docket No. 93N-0473]

Peanut Butter: Proposed Amendment of Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standard of identity for peanut butter to remove the statement that added vitamins are not suitable ingredients of this food. If this change is adopted, manufacturers will be able to add vitamins to make modified peanut butter in accordance with the agency's general definition and standard of identity for food named by the use of a nutrient content claim (such as "reduced fat" or "reduced calorie") and a standardized term (peanut butter). FDA is proposing to take this action because it tentatively finds that providing for modified forms of peanut butter will assist consumers in maintaining healthy dietary practices. Thus, the agency tentatively concludes that this action will promote honesty and fair dealing in the interest of consumers.

DATES: Comments by April 4, 1994. FDA proposes that any final rule that may issue based on this proposal become effective 60 days after date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5099.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2431), FDA adopted § 130.10 (21 CFR 130.10). This regulation provides for the use of nutrient content claims defined in part 101 (21 CFR part 101), such as "fat free," "low calorie," or "light," in conjunction with a traditional standardized food name (e.g., "sour cream") to define a new food such as "reduced fat sour cream." The purpose of the new general standard of identity is to provide for modified versions of certain standardized foods and thereby to assist consumers in maintaining healthy dietary practices.

The general standard of identity in § 130.10 requires, among other things, that the modified versions of the standardized foods: (1) Not be nutritionally inferior to the traditional standardized food, (2) possess performance characteristics, such as physical properties, flavor characteristics, functional properties, and shelf life, that are similar to those of the traditional standardized food, (3) contain a significant amount of any mandatory ingredient required to be in the traditional food, and (4) be made from the same types of ingredients as permitted in the standard for the traditional food, except that ingredients may be used to improve texture, prevent syneresis, add flavor, extend shelf life, improve appearance, or add sweetness. Section 130.10(d)(5) also provides for the use of water and fat analogs to replace fat and calories but specifically prohibits the replacement of required ingredients of standardized foods with ingredients from a different source. For example, vegetable oil may not replace milkfat in the manufacture of a modified version of sour cream. Furthermore, § 130.10(d)(3) of the general standard of identity prohibits the use in the modified food of any ingredient or component of an ingredient whose use in the traditional food is specifically prohibited by the standard of identity for that food (21 CFR parts 131 through 169).

In the **Federal Register** of January 6, 1993, in a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as the "implementation final rule"), FDA provided an opportunity for comment on technical issues raised by the final regulations on food labeling that it published on that date, including § 130.10. The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues.

In response to the implementation final rule, the agency received several inquiries regarding ingredients whose use in modified foods is prohibited under § 130.10(d)(3) of the general standard. Comments claimed that this provision is inconsistent with § 130.10(b), which requires that nutrients be added to the new food to restore nutrient levels so that the new food is not nutritionally inferior to the traditional food. One comment suggested that FDA amend § 130.10(d)(3) by adding an exception to allow for compliance with § 130.10(b). This comment contended that without such an exception, no nutritionally improved versions of important products such as peanut butter would be permitted, except when labeled as imitations.

In the **Federal Register** of August 18, 1993, FDA published a final rule entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for Fat, Fatty Acids, and Cholesterol content of Foods; Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term; Technical Amendment" (58 FR 44020) (hereinafter referred to as "the technical amendment"). In this document, the agency acknowledged that it was arguable that there was a conflict between § 130.10(b) and (d)(3) (58 FR 44020 at page 44028) but stated that no conflict between these provisions was intended. It recognized, however, that while the need to ensure that the modified food is consistent in characteristics with the traditional standardized food in as many ways as possible, and the need to ensure that the modified food is not made with ingredients not permitted in the traditional food, normally support each other, in the case of peanut butter, and only peanut butter, they work to prevent the creation of modified peanut butter products.

The standard of identity for peanut butter in § 164.150(c) (21 CFR 164.150(c)) states that artificial flavorings, artificial sweeteners, chemical preservatives, added vitamins, and color additives are not suitable ingredients for use in the food. Based on testimony at the hearings held when the standard of identity for peanut butter was adopted and the resulting findings of fact (33 FR 10506 at 10509, July 24, 1968), the agency adopted this prohibition on the addition of vitamins to peanut butter because such addition is unnecessary when the peanut butter is consumed as part of a balanced diet. As a result of the prohibition on vitamin addition in the peanut butter standard (§ 164.150(c)), it may not be possible to formulate a modified peanut butter product that is not nutritionally inferior to peanut butter under the general standard of identity. For example, if the level of vitamins is reduced in making

the modified peanut butter product, e.g., a "reduced calorie" or "reduced fat" peanut butter, vitamins would have to be added to ensure compliance with § 130.10(b).

In the technical amendment, the agency discussed the appropriateness of amending the standard of identity for peanut butter to remove the specific prohibition regarding the addition of vitamins in § 164.150(c) as well as the appropriateness of the option suggested in comments of modifying § 130.10 to allow the addition of nutrients to modified peanut butter products (58 FR 44020 at 44028 and 44029). FDA stated that it was the agency's preliminary view that it is more appropriate to amend the standard of identity for peanut butter to remove the specific prohibition regarding the addition of vitamins than to modify § 130.10. FDA said that amendment of the peanut butter standard would accomplish the same result as the suggested modification of § 130.10 but would allow the general standard of identity to remain a generic standard applicable to any standardized food. FDA is now proposing to amend § 164.150(c) to effect this change.

The agency points out that FDA's regulations make provision for nonstandardized spreadable peanut products. Under § 102.23 (21 CFR 102.23), these products may be labeled with the common or usual name "peanut spreads," provided that the identity statement contains a statement of the percent of peanut ingredient, and the product complies with the nutrient content requirements in § 102.23. This regulation has not, however, fostered a large number of products.

FDA believes that amendment of the peanut butter standard to remove the prohibition on added vitamins will lead to the creation of more peanut products than has been the case under § 102.23 because manufacturers will be able to use the term "peanut butter" instead of "peanut spread" in the names of their products. Further, FDA believes that the use of defined nutrient content claims will promote uniformity in labeling and will enhance consumer recognition of modified peanut butter products that have been designed to achieve a nutritional goal. This enhanced recognition will assist consumers in maintaining healthy dietary practices. Thus, FDA tentatively finds that a change in the peanut butter standard that will permit the use of added vitamins in the production of modified peanut butter products is in the best interest of consumers. Accordingly, FDA is proposing to revise § 164.150(c) by removing the specific prohibition regarding "added vitamins." This change will allow the addition of nutrients normally present in peanut butter that would otherwise be reduced in manufacturing the modified peanut butter products, thereby ensuring that the modified version of the food will not be nutritionally inferior to peanut butter.

FDA notes that the removal of the specific prohibition against added vitamins in the peanut butter standard does not change the agency's position that added vitamins are not necessary for peanut butter that has not been modified when it is consumed in a balanced diet. Thus, if vitamins were added to a food that complies with the standard of identity in § 164.150, the resultant food would not be peanut butter.

II. Economic Impact

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. The proposed removal of the specific prohibition regarding added vitamins in the peanut butter standard of identity will not affect the manufacture or labeling of peanut butter as defined in § 164.150. However, it will provide an additional option to manufacturers of spreadable peanut products that do not comply with the standard of identity for peanut butter. It will permit the manufacture and labeling of some modified peanut butter products in accordance with the general definition and standard of identity in § 130.10. Products complying with the general definition and standard of identity may be named by use of a nutrient content claim and the standardized term "peanut butter," thereby minimizing confusion to consumers regarding the nature of the food.

Because the manufacture of modified peanut butter products complying with the new general definition and standard of identity is optional, and manufacturers may continue to make nonstandardized spreadable peanut products in accordance with the common or usual name regulation in § 102.23 and peanut butter in accordance with the standard of identity in § 164.150, FDA does not believe that the proposed change to remove the specific prohibition regarding "added vitamins" in the standard of identity will have any adverse economic impact on manufacturers. Therefore, FDA finds that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. In addition, FDA certifies in accordance with section 605 of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Comments

Interested persons may, on or before April 4, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 164

Food grades and standards, Nuts, Peanuts.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 164 be amended as follows:

PART 164—TREE NUT AND PEANUT PRODUCTS

1. The authority citation for 21 CFR part 164 is revised to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

2. Section 164.150 is amended by revising paragraph (c) to read as follows:

§ 164.150 Peanut butter.

* * * * *

(c) The seasoning and stabilizing ingredients referred to in paragraph (a) of this section are suitable substances which are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act), or if

they are food additives as so defined, they are used in conformity with regulations established pursuant to section 409 of the act. Seasoning and stabilizing ingredients that perform a useful function are regarded as suitable, except that artificial flavorings, artificial sweeteners, chemical preservatives, and color additives are not suitable ingredients in peanut butter. Oil products used as optional stabilizing ingredients shall be hydrogenated vegetable oils. For the purposes of this section, hydrogenated vegetable oil shall be considered to include partially hydrogenated vegetable oil.

* * * * *

Dated: January 24, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–2359 Filed 2–2–94; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 247, 880, 881, and 883

[Docket No. R–94–1696; FR–3472–P–01]

RIN 2502–AG12

Termination of Tenancy for Criminal Activity

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control would be grounds for termination of tenancy.

DATES: Comments must be received by April 4, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Facsimile (FAX) comments are not acceptable.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: James Tahash, Director of Planning and Procedures Division, room 6180, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000; telephone, (voice) (202) 708–4162; (TDD) (202) 708–4594. (These are not toll-free numbers)

SUPPLEMENTARY INFORMATION: This proposed rule would amend regulations for certain section 8 project-based assistance programs to provide that a section 8 family may be evicted for drug crimes or for criminal activity that threatens other residents. Eviction may be based on such criminal activity by a household member, a guest or another person under the tenant's control.

For existing housing under the section 8 Loan Management Program (24 CFR part 886, subpart A) and section 8 Property Disposition Program (24 CFR part 886, subpart C), the proposed rule would implement section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(B)(iii)), as amended by section 546 of the Cranston-Gonzalez National Affordable Housing Act and section 145 of the Housing and Community Development Act of 1992.

At present, HUD's Multifamily Model Lease (Handbook 4350.3 Appendix 19a) contains similar provisions allowing eviction for drug-related criminal activities or criminal activity that threatens other residents.

This proposed rule would revise 24 CFR parts 247, 880, 881 and 883. The proposed rule would apply to evictions under the section 8 new construction and substantial rehabilitation programs and under the section 8 Loan Management and Property Disposition Programs. This proposed rule also would cover the following subsidized projects subject to 24 CFR part 247: multifamily housing projects that receive the benefit of subsidy in the form of below-market interest rates under sections 221(d)(3) and (5); interest reduction payments under section 236 of the National Housing Act, including Rental Assistance Payments (RAP); below-market interest rate direct loans under section 202 of the Housing Act of 1959; rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; section 8 in connection with section 202 Loans for Housing for the Elderly or Handicapped (24 CFR part 885), the section 8 Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR part 886, subpart A) and the section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR part 886, subpart C).

The proposed rule would be applied uniformly to all assisted housing tenants for the programs listed above. The rule proposes to add criminal activity, including drug-related criminal activity, as grounds for termination of tenancy. The existing requirement that an owner not evict any tenant, except by judicial action pursuant to State or local law and in accordance with the Department's regulations and its due process procedures, will remain in effect.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(c), of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act

The Secretary, in approving this proposed rule for publication, certifies in accordance with 5 U.S.C. 605(b), the Regulatory Flexibility Act, that this proposed rule would not have a significant economic impact on a substantial number of small entities. There are no small entities that would be impacted by this proposed rule.

Executive Order

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

Semiannual Agenda

This proposed rule was listed as item 1514 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56404, 56424) under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submited to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and

Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that, while this proposed rule should increase the safety and security of families living in assisted housing, the proposed rule does not have potential, direct, significant impact on family formation, maintenance, and general well-being; therefore, it is not subject to review under this order.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have significant federalism implications and thus, are not subject to review under the order. This proposed rule will not interfere with or preempt State or local government functions.

List of Subjects

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 247, 880, 881, and 883 would be amended as follows:

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

1. The authority citation for 24 CFR part 247 would be revised to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715*l*, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

2. Section 247.3 would be amended by removing the word "or" from paragraph (a)(2); by redesignating paragraph (a)(3) as paragraph (a)(4); by adding a new paragraph (a)(3); and by amending paragraph (b) by removing the reference to "§ 247.3(a)(3)" and by adding in its place "§ 247.3(a)(4)", to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

(a) * * *

(3) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control, or

* * * * *

3. In § 247.4, paragraph (c) would be amended by removing the reference to "§ 247.3(a)(3)" and by adding in its place "§ 247.3(a)(4)".

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

4. The authority citation for 24 CFR part 880 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d).

5. Section 880.607 would be amended by removing the word "or" from paragraph (b)(1)(ii); by redesignating paragraph (b)(1)(iii) as (b)(1)(iv); by adding a new paragraph (b)(1)(iii); by revising the newly designated (b)(1)(iv); and by amending paragraphs (b)(2) and (c)(2) by removing the references to "(b)(1)(iii)" and by adding in their places "(b)(1)(iv)", to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(1) * * *

(iii) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control, or

(iv) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations also must be in accordance with the provisions of any State and local landlord tenant law and with paragraph (c) of this section.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

6. The authority citation for 24 CFR part 881 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, and 1437f, 3535(d) and 12701.

7. Section 881.607 would be amended by removing the word "or" from paragraph (b)(1)(ii); by redesignating paragraph (b)(1)(iii) as paragraph (b)(1)(iv); by adding a new (b)(1)(iii); by revising the newly designated (b)(1)(iv); and by amending paragraphs (b)(2) and (c)(2) by removing the references to "(b)(1)(iii)" and by adding in their places "(b)(1)(iv)", to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(1) * * *

(iii) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control, or

(iv) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations also must be in accordance with the provisions of any State and local

landlord tenant law and with paragraph (c) of this section.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

8. The authority citation for 24 CFR part 883 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

9. Section 883.708 would be amended by removing the word "or" from paragraph (b)(1)(ii); by redesignating paragraph (b)(1)(iii) as paragraph (b)(1)(iv); by adding a new paragraph (b)(1)(iii); and by amending paragraphs (b)(2) and (c)(2) by removing the references to "(b)(1)(iii)" and by adding in their places "(b)(1)(iv)", to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(1) * * *

(iii) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control, or

* * * * *

Dated: January 26, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–2390 Filed 2–2–94; 8:45 am]

BILLING CODE 4210–27–P

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24 CFR Part 232

[Docket No. R–94–1695; FR–3374–P–01]

RIN 2502–AF89

Assisted Living Facilities Under Section 232

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations to implement statutory authority to insure assisted living facilities for the care of frail elderly persons, as authorized by section 511 of the Housing and Community Development Act of 1992. This proposed rule would also expand current regulations to include the refinancing of conventional (non-FHA insured) nursing homes, intermediate care facilities, assisted living facilities or board and care homes under section 223(f) of the National Housing Act, and to insure additions to existing such projects. Finally, this proposed rule would make conforming changes required by the Housing and Community Development Act of 1992, and would make minor technical changes to the regulations to remove ambiguity and reflect long-standing Departmental policy.

DATES: Comments due date: April 4, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Linda D. Cheatham, Director, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW, Washington, DC 20410–0500, telephone: (202) 708–3000; the telecommunications device for the deaf (TDD) telephone number is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Currently, under section 232 of the National Housing Act (NHA), and the accompanying regulations at 24 CFR part 232, the Department insures mortgages for nursing homes, intermediate care facilities, and board and care homes. Section 511 of the Housing and Community Development Act of 1992, Public Law 102–550, approved October 28, 1992 (1992 HCD Act), amends section 232 of the NHA by authorizing FHA mortgage insurance for assisted living facilities. In compliance with section 511 of the 1992 HCD Act, this proposed rule would revise 24 CFR part 232 to make assisted living facilities for the care of the frail elderly eligible for mortgage insurance.

Under the NHA and this proposed rule, the term "assisted living facility" means a public facility, proprietary facility, or facility of a private nonprofit corporation that:

(1) Is licensed and regulated by the State or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located;

(2) Makes available to residents supportive services to assist the residents in carrying out activities of daily living such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medications, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing, and therapy; and

(3) Provides separate dwelling units for residents, each of which may contain a full kitchen or bathroom, and includes common rooms and other facilities appropriate for the provision of supportive services to residents of the facility.

Under the NHA and this proposed rule, the term "frail elderly" has the same meaning as the term in section 802(k) of the Cranston-Gonzalez National Affordable Housing Act (NAHA). Section 802(k)(8) defines "frail elderly" as meaning an elderly person who is unable to perform at least three activities of daily living adopted by the Secretary. (The term "activity for daily living" means an activity regularly necessary for personal care and includes bathing, dressing, eating, getting in and out of bed and chairs, walking, going outdoors, and using the toilet.)

An assisted living facility may be free-standing, or part of a complex that includes a nursing home, an intermediate care facility, a board and care facility or any combination of the above. However, in compliance with section 511 of the 1992 HCD Act, this proposed rule would not authorize mortgage insurance for an assisted living facility unless the Secretary determines that the level of financing acquired by the mortgagor and any other resources available for the facility are sufficient to ensure that the facility contains dwelling units and facilities for the provision of supportive services; the mortgagor provides satisfactory assurances that no dwelling unit in the facility will be occupied by more than one person without the consent of all such occupants; and the appropriate state licensing agency for the state, municipality or other political subdivision in which the facility is or is

to be located provides adequate assurances that the facility will comply with any applicable standards and requirements for such facilities.

Section 511 of the 1992 HCD Act also amends section 223(f) of the NHA. In accordance with section 511, this proposed rule would authorize the refinancing of an existing assisted living facility. This proposed rule would also expand the section 232 program to include the refinancing of conventional projects under section 223(f) of the National Housing Act. Section 409 of the Housing and Community Development Act of 1987 amended section 223(f) of the NHA to cover the refinancing of existing debt of an existing nursing home, existing intermediate care facility, existing board and care facility (collectively referred to as "residential care facility), or any combination of the above.

However, after section 409 of the Housing and Community Development Act of 1987 was enacted, the Department only implemented section 409 for existing FHA-insured residential care facilities. (On August 31, 1988 (53 FR 33735), the Department added insurance for existing residential care facilities that are currently FHA-insured.) HUD's decision not to implement section 409 in its entirety was based on the fact that HUD had no experience in underwriting existing residential care facilities. By limiting the insurance for refinanced transactions to currently FHA-insured projects with a known track record (annual inspections, availability of audited financial statements, etc.), the Department could more adequately protect the General Insurance Fund.

However, the House Conference Report for the NAHA (H.R. 101–943, 101st Cong. 2d Sess, at 524) emphasizes Congress's intent that the Department fully implement section 409 to include conventional (non-FHA insured) projects. Accordingly, the Department is now expanding the program to include mortgages for the purchase and refinancing of existing residential care facilities with non-FHA insured mortgages under section 232 pursuant to section 223(f).

To implement further statutory changes, this proposed rule would make projects consisting of an addition to an existing (non-FHA insured) nursing home, board and care facility, intermediate care facility, or assisted living facility eligible for mortgage insurance under section 232 of the NHA. Moreover, this proposed rule would increase the loan-to-value ratio for private nonprofit mortgagors from 90 percent to 95 percent, and would make conforming changes for fire safety equipment for assisted living facilities.

In addition to statutory changes, this proposed rule would make minor technical amendments to part 232. Specifically, this proposed rule would move the definition of substantial rehabilitation from § 232.902(b) to the definitional section of the regulations (section 232.1), and revise the definition of substantial rehabilitation to reflect the requirement that rehabilitation must involve two or more major building components. The current wording "more than one building component" could be erroneously interpreted.

Moreover, the word "additions" would be removed from the definition of substantial rehabilitation. The placement of "additions" in § 232.902(b) of the existing regulations has caused confusion because it incorrectly suggests that the cost of an addition to an existing building can be used in calculating the 15 percent of value criterion. The term "additions," as used in § 232.902(b) was intended to mean an addition of a new project element in a residential care facility, such as a whirlpool bath, safety railing, etc. The Department wants to emphasize that these revisions to the definition of substantial rehabilitation do not reflect a policy change, but are technical changes which reflect the Department's long standing administrative policy.

Finally, this proposed rule would increase the loan-to-value ratio for private nonprofit mortgagors from 85 percent to 90 percent for the purchase or refinance of a residential care facility which does not involve substantial rehabilitation.

II. Other Matters

A. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington DC.

B. Regulatory Flexibility Act

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. Specifically, the proposed rule expands eligible projects for FHA mortgage insurance to include assisted living facilities, and additions to existing projects, neither of which are expected to have a significant economic impact on a substantial number of small entities.

C. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the proposed rule is directed to owners of residential care facilities, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the proposed rule is not subject to review under the order.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

F. Regulatory Agenda

This proposed rule was listed as item no. 1510 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56424) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

G. Paperwork Reduction Act

The amendments that would be made to 24 CFR part 232 by this proposed rule

would not add any additional information collection burden than that already approved by the Office of Management and Budget under the Paperwork Reduction Act.

The Catalog of Federal Domestic Assistance program number is 14.129.

List of Subjects in 24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 232 would be amended as follows:

1. The authority citation for 24 CFR part 232 would continue to read as follows:

Authority: 12 U.S.C. 1715b, 1715w, 1715z(9); 42 U.S.C. 3535(d).

2. The title of 24 CFR part 232 would be revised to read as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES.

3. Section 232.1 would be amended by revising paragraph (j) and by adding new paragraphs (m), (n), and (o) to read as follows:

§ 232.1 Definitions.

* * * * *

(j) *Project* means a nursing home, intermediate care facility, assisted living facility or board and care home, or any combination of nursing home, intermediate care facility, assisted living facility or board and care home, approved by the Commissioner under provisions under this subpart. A project may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

* * * * *

(m) *Assisted Living Facilities* means a public facility, proprietary facility, or facility of a private nonprofit corporation that is used for the care of the frail elderly, and that:

(1) Is licensed and regulated by the State or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located;

(2) Makes available to residents supportive services to assist the residents in carrying out activities of daily living such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, doing laundry, preparing meals, shopping for personal items, obtaining and taking medications, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy;

(3) Provides separate dwelling units for residents, each of which may contain a full kitchen or bathroom, and includes common rooms and other facilities appropriate for the provision of supportive services to residents of the facility.

(n) *Frail elderly persons* means an elderly person who is unable to perform at least three activities of daily living. Activity of daily living means an activity necessary on a regular basis for personal care and includes bathing, dressing, eating, getting in and out of beds and chairs, walking, going outdoors and using the toilet.

(o) *Substantial rehabilitation* consists of repairs, replacements and improvements:

(1) The cost of which exceeds the greater of fifteen percent (15%) of the Project's value after completion of all repairs, replacements, and improvements; or

(2) That involve the replacement of two or more major building components. For purposes of this definition, the term major building component includes:

(i) Roof structures;

(ii) Ceiling, wall, or floor structures;

(iii) Foundations;

(iv) Plumbing systems;

(v) Heating and air conditioning systems; and

(vi) Electrical systems.

4. A new § 232.7 would be added to the end of the undesignated center heading, "APPLICATION AND CERTIFICATION", in subpart A, to read as follows:

Subpart A—Eligibility Requirements

* * * * *

Application and Certification

* * * * *

§ 232.7 Additional requirements for assisted living facilities.

In the case of an assisted living facility, or any such facility combined with any other home or facility, the Secretary shall not insure any mortgage under this part unless:

(a) The Secretary determines that the level of financing acquired by the mortgagor and any other resources available for the facility will be sufficient to ensure that the facility contains the dwelling units and facilities for the provision of supportive services in accordance with § 232.1(m);

(b) The mortgagor provides assurances satisfactory to the Secretary that no dwelling unit in the facility will be occupied by more than one person without the consent of all such occupants; and

(c) The appropriate state licensing agency for the state, municipality or other political subdivision in which the facility is or is to be located provides such assurances as the Secretary considers necessary that the facility will comply with any applicable standards and requirements for such facilities.

5. Section 232.30 would be revised to read as follows:

§ 232.30 Maximum mortgage amounts for new construction and substantial rehabilitation.

The mortgage for a project involving proposed new construction or substantial rehabilitation by a profit motivated mortgagor shall involve a principal obligation not in excess of 90 percent of the Commissioner's estimate of the value of the project, including equipment to be used in the operation, when the proposed improvements are completed and the equipment is installed. The mortgage for a project involving proposed new construction or substantial rehabilitation by a private nonprofit mortgagor shall involve a principal obligation not in excess of 95 percent of such value, including equipment.

6. Section 232.32 would be amended by revising the section heading, the introductory paragraph, and paragraphs (b) and (c) to read as follows:

§ 232.32 Adjusted mortgage amount—substantial rehabilitation projects.

In addition to the limitations of § 232.30, a mortgage having a principal amount computed in compliance with the applicable provisions of this subpart, and which involves a project to be substantially rehabilitated, shall be subject to the following additional limitations:

* * * * *

(b) Property subject to existing mortgage. If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) The Commissioner's estimate of the cost of the repair or rehabilitation; plus

(2) such portion of the outstanding indebtedness as does not exceed 90

percent (95 percent for a private nonprofit mortgagor) of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent (95 percent for a private nonprofit mortgagor) of:

(1) The Commissioner's estimate of the cost of the repair or rehabilitation; and

(2) The actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

7. In § 232.39, a new paragraph (c) would be added as follows:

§ 232.39 Construction standards.

* * * * *

(c) An assisted living facility shall be one or more free-standing structures (architecturally independent of any other structure), an entity of an existing structure such as a board and care home, or connected to a main building or identifiable separate portions of one or more free-standing structures containing not fewer than five residential efficiency, one-bedroom or two-bedroom units. Residential unit means a separate apartment or unit for one or more persons. An assisted living unit must contain a full bathroom and may contain a kitchenette or a full kitchen depending on the design and market. A kitchen is not required in each unit; however, the facility must have a central kitchen and group dining facilities. The assisted living facility or designated portion of the structure shall not contain any nursing home or intermediate care beds, but may contain board and care beds. In addition, assisted living facilities must meet State and local licensing requirements, governmental building codes, and other occupancy standards.

8. A new § 232.42a would be added to subpart A to read as follows:

§ 232.42a Additions to existing projects.

A mortgage which covers an addition to an existing project is eligible for insurance under this part, provided that, if there is a mortgage on the existing project, such mortgage must be refinanced under this part. The mortgage amount for an addition in all cases shall be determined under section 232.30. If the existing project requires substantial rehabilitation then the mortgage amount for refinancing the existing facility shall be determined under §§ 232.30 and 232.32. If the existing project does not require substantial rehabilitation then the mortgage amount for refinancing the existing facility shall be determined under § 232.903. The resulting determination for the mortgage on the addition and the resulting determination for the refinanced mortgage on the existing project must be blended and both the addition and the existing project must be subject to the same mortgage.

9. Section 232.89 would be revised to read as follows:

§ 232.89 Reduction in mortgage amount.

If the principal obligation of the mortgage exceeds 90 percent (95 percent for a private nonprofit mortgagor) of the total amount as shown by the certificate of actual cost plus the value of the land (the cost shown by the certificate of actual cost in rehabilitation cases), the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

10. Section 232.90 would be amended by revising the section heading, the introductory paragraph, and paragraphs (b) and (c) to read as follows:

§ 232.90 Substantial rehabilitation projects.

In the event the mortgage is to finance substantial rehabilitation, the mortgagor's actual cost of the substantial rehabilitation may include the items of expense permitted by new construction in accordance with this part and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

* * * * *

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or 90 percent (95 percent for a private nonprofit mortgagor) of the Commissioner's estimate of the fair market value of the land and existing improvements prior to the repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price or the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the applicable 90 percent (95 percent for a private nonprofit mortgagor) of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

11. Section 232.500 would be amended by revising the introductory paragraph (c)(1), and paragraph (d), to read as follows:

§ 232.500 Definitions.

* * * * *

(c)(1) *Fire safety equipment* means equipment that is purchased, installed, and maintained in a nursing home, intermediate care facility, assisted living facility, or board and care home and that meets the following standards for the applicable occupancy:

* * * * *

(d) *Fire safety loan* means any form of secured or unsecured obligation determined by the Commissioner to be eligible for insurance under this subpart and, in the case of an assisted living facility or a board and care home, made with respect to such a home located in a State which the Secretary has determined is in compliance with the provisions of section 1616(e) of the Social Security Act.

* * * * *

12. Section 232.505 would be amended by revising paragraph (b) to read as follows:

§ 232.505 Application and application fee.

* * * * *

(b) *Filing of application.* An application for insurance of a fire safety loan for a nursing home, intermediate care facility, assisted living facility or board and care home shall be submitted on an approved HUD form by an approved lender and by the owners of the project to the local HUD office.

* * * * *

13. Section 232.615 would be amended by revising paragraph (b) to read as follows:

§ 232.615 Eligible borrowers.

* * * * *

(b) Also eligible as a borrower shall be a profit or nonprofit entity which owns an assisted living facility or board and care home for which HUD has determined that the installation of fire

safety equipment is approvable under the definition contained in § 232.500(c).

14. Section 232.901 would be revised to read as follows:

§ 232.901 Mortgages covering existing projects are eligible for insurance.

A mortgage executed in connection with the purchase or refinancing of an existing project without substantial rehabilitation may be insured under this subpart pursuant to section 223(f) of the Act. A mortgage insured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

15. Section 232.902 would be revised to read as follows:

§ 232.902 Eligible project.

Existing projects (with such repairs and improvements as are determined by the Commissioner to be necessary) are eligible for insurance under this subpart. The project must not require substantial rehabilitation and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the project, or from the beginning of occupancy, whichever is later, to the date of application for insurance. In addition, the project must have attained sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the Commissioner, before endorsement of the project for insurance; alternatively, the mortgagor must provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the Commissioner.

16. Section 232.903 would be amended by revising the first sentence in the introductory paragraph (a), the first sentence in paragraph (b), and the first sentence in the introductory paragraph (d), to read as follows:

§ 232.903 Maximum mortgage limitations.

* * * * *

(a) *Value limit.* The mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) for a profit motivated mortgagor (ninety percent (90%) for a private nonprofit mortgagor) of the Commissioner's estimate of the value of the project, including major movable equipment to be used in its operation and any repairs and improvements. * * *

* * * * *

(b) *Debt service limit.* The insured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) for a profit motivated mortgagor (ninety percent (90%) for a private nonprofit mortgagor) of the net projected project income available for payment of debt service. * * *

* * * * *

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) for a profit motivated mortgagor (ninety percent (90%) for a private nonprofit mortgagor) of the cost of acquisition as determined by the Commissioner. * * *

* * * * *

Dated: January 21, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94-2466 Filed 2-2-94; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[PS-158-86]

RIN 1545-AJ23

Petroleum Tax Imposed on Natural Gasoline; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to taxes imposed on natural gasoline.

DATES: The public hearing will be held on Thursday, March 3, 1994, beginning at 10 a.m. Outlines of oral comments must be received by Thursday, February 17, 1994.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R [PS-158-86], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 4611 of the Internal Revenue Code. The notice of proposed rulemaking was published in the Federal Register on April 26, 1993 (58 FR 21963).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, February 17, 1994, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94-2477 Filed 2-2-94; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AG73

Disease Associated with Exposure to Certain Herbicide Agents (Multiple Myeloma and Respiratory Cancers)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning presumptive service connection for certain diseases even though there is no record of the disease during service. This proposed amendment is necessary to implement a decision of the Secretary of Veterans Affairs under the authority granted by the Agent Orange Act of 1991 that there is a positive association

between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of multiple myeloma and respiratory cancers. The intended effect of this proposed amendment is to establish presumptive service connection for those conditions based on herbicide exposure.

DATES: Comments must be received on or before March 7, 1994. Comments will be available for public inspection until March 15, 1994.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 2(a)(1) of the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11 (1991), added 38 U.S.C. 1116 which established presumptive service connection for veterans with service in the Republic of Vietnam during the Vietnam era who subsequently develop, to a degree of 10 percent or more, non-Hodgkin's lymphoma, soft-tissue sarcoma (subject to specified statutory exceptions), and chloracne or other acneform disease consistent with chloracne (within one year of the last date of active service in the Republic of Vietnam during the Vietnam era), even though there is no record of that disease during military service. Final regulations implementing this statutory provision were published in the **Federal Register** of May 19, 1993 (See 58 FR 29107–09).

Section 3 of Public Law 102–4 directed the Secretary to enter into an agreement with the National Academy of Sciences (NAS) to review the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease.

Section 1116(b) of 38 U.S.C. provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association exists between exposure of humans to an herbicide agent (i.e., a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. An association is considered "positive" if the credible evidence for the association is equal to or outweighs the credible evidence against the association. In making that determination, the Secretary is to consider reports received from NAS as well as other available sound medical and scientific evidence and analyses.

After reviewing approximately 6,420 abstracts of scientific or medical articles and approximately 230 epidemiologic studies, consulting with outside experts, and conducting public hearings, NAS issued a report, entitled "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam", on July 27, 1993. NAS concluded that there is sufficient evidence of an association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of chloracne, non-Hodgkin's lymphoma, soft-tissue sarcoma, Hodgkin's disease and porphyria cutanea tarda. VA was already paying compensation for the first three conditions based upon the statutory presumptions established by Public Law 102–4, and the Secretary announced that same day that he had concluded that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease and porphyria cutanea tarda. Proposed regulations were published in the **Federal Register** on September 28, 1993 (See 58 FR 50528–30).

The Secretary also announced that VA would review the remaining findings in the NAS report to determine whether a positive association exists between herbicide exposure and any other conditions. That review has been completed and the Secretary has concluded that a positive association exists for multiple myeloma and respiratory cancers. The NAS report found "limited/suggestive evidence"—a category it defined as meaning that evidence suggests an association between herbicide exposure and a specific disease, but that chance, bias, and confounding cannot be ruled out with confidence—of an association between herbicide exposure and the subsequent development of multiple myeloma. VA, however, found the evidence concerning multiple myeloma, a malignant proliferation of plasma cells which are derived from B lymphocytes, to be convincing. Most of the studies reviewed by NAS showed an increased risk, although in most cases it was not a statistically significant increase. One occupational study (Fingerhut M.A., Halperin W.E., Marlow D.A., Piacitelli L.A., Honchar P.A., Sweeney M.H., Greife A.L., Dill P.A., Steenland K., Suruda A.J. 1991. Cancer mortality in workers exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin. New England Journal of Medicine 324:212–218) found a relationship between herbicide exposure and multiple myeloma. Although this finding was not supported by the findings of Saracci and colleagues (Saracci R., Kogevinas M., Bertazzi P.A., Bueno De Mesquita B.H., Coggon D., Green L.M., Kauppinen T., L'Abbe K.A., Littorin M., Lynge E., Mathews J.D., Neuberger M., Osman J., Pearce N., Winkelman R. 1991. Cancer mortality in workers exposed to chlorophenoxy herbicides and chlorophenols. Lancet 338:1027–1032), the Saracci study is flawed as a result of questions regarding exposure. Another study (Pesatori A.C., Consonni D., Tironi A., Landi M.T., Zocchetti C., Bertazzi P.A. 1992. Cancer morbidity in the Seveso area, 1976–1986. Chemosphere 25:209–212) showed a clear association between herbicide exposure and multiple myeloma in both males and females. Moreover, multiple myeloma is closely related biologically to B-cell non-Hodgkin's lymphoma; consequently, the epidemiological evidence concerning non-Hodgkin's lymphoma gives added weight to the association between herbicide exposure and multiple myeloma. Based on this clinical consideration and the weight of the epidemiogical evidence, the Secretary has determined that there is a positive association between herbicide exposure and multiple myeloma that manifests itself to a degree of 10 percent at any time after exposure. We are proposing to amend 38 CFR 3.309(e) to implement the Secretary's decision. This amendment is proposed to be effective the date of publication of the

final rule, as provided by Public Law 102–4.

The NAS report also found limited/suggestive evidence of an association between herbicide exposure and the subsequent development of respiratory cancers, specifically cancers of the lung, larynx, or trachea. For study purposes, NAS included cancer of the bronchus when it considered cancer of the lung; therefore, we are including cancer of the bronchus within the scope of the proposed presumption.

In reviewing the NAS report, which noted that not all studies had fully controlled for or evaluated smoking as a confounding factor, VA gave weight to the fact that the studies found high relative risks for respiratory cancers in production workers (Manz A., Berger J., Dwyer J.H., Flesch-Janys D., Nagel S., Waltsgott H. 1991. Cancer mortality among workers in chemical plant contaminated with dioxin. Lancet 338:959–964; Fingerhut et al., 1991). The Fingerhut study showed an increased risk with the duration of exposure. VA also noted that despite the failure of some studies to control for smoking, it is unlikely that there were major differences in smoking patterns between the study and control groups. Considering all of the evidence, the Secretary has determined that the credible evidence for an association outweighs the credible evidence against an association and that there is, therefore, a positive association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of respiratory cancers.

VA also found that the weight of the available evidence indicates that chemically-induced respiratory cancers manifest within a definite period following exposure, after which there is little effect from the exposure (Finkelstein M.M., 1991. Use of "time windows" to investigate lung cancer latency intervals at an Ontario steel plant. American Journal of Industrial Medicine 19:299–235). In our judgment, it is reasonable to assume that respiratory cancers due to herbicide exposure will show a risk pattern similar to other chemically-induced respiratory cancers, and we are proposing as part of our rule that respiratory cancer will be presumed service connected only if it is manifest within 30 years after exposure. The longest manifestation period noted for a respiratory cancer following herbicide exposure is about 30 years (Zach J.A., Suskind R.R. 1980. The mortality experience of workers exposed to tetrachlorodibenzodioxin in a trichlorophenol process accident. Journal of Occupational Medicine 22:11–14; Zober A., Messerer P., Huber P. 1990. Thirty-four year mortality follow-up of BASF employees to 2,3,7,8–TCDD after the 1953 accident. Occupational Environmental Health 62:139–157). If future studies indicate that this manifestation period is inappropriate, VA will amend it accordingly. We are proposing to amend 38 CFR 3.307(a) and 3.309(e) to implement the Secretary's decision. This amendment is proposed to be effective the date of publication of the final rule, as provided by Public Law 102–4.

38 U.S.C. 1113 provides that where there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases for which presumptive service connection may be allowed under the provisions of 38 U.S.C. 1112 (i.e., chronic diseases, tropical diseases, prisoner-of-war related diseases, or diseases specific to radiation-exposed veterans), has been suffered between the date of separation from service and the onset of any such diseases, or the disability is due to the veteran's own willful misconduct, presumptive service connection will not be in order. Section 2(b) of public law 102–4 amends 38 U.S.C. 1113 so that its provisions also apply to the presumptive conditions associated with herbicide exposure under 38 U.S.C. 1116. Consequently, service connection for multiple myeloma or respiratory cancers based on herbicide exposure is precluded if there is affirmative evidence that establishes a non-service related supervening condition or event as the cause of the multiple myeloma or respiratory cancers, or the disability is due to the veteran's own willful misconduct (See 38 U.S.C. 1113).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Secretary has determined that it is not feasible to allow the 60 day comment period referred to in section 6(a)(1) of Executive Order 12866 because a comment period of that length would prevent VA from complying with the statutory requirement to publish a final rule within 90 days of publication of the proposed rule imposed by 38 U.S.C. 1116(c)(2).

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: December 3, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.307, paragraph (a)(6)(ii), is revised to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) * * *

(6) * * *

(ii) The diseases listed at § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne and porphyria cutanea tarda shall have become manifest to a degree of 10 percent or more within a year, and respiratory cancers within 30 years, after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

* * * * *

§ 3.309 [Amended]

3. In § 3.309(e) in the listing of diseases, after the words "Hodgkin's disease" and before the words "Non-Hodgkin's lymphoma", add the words "Multiple myeloma"; and after the words "Porphyria cutanea tarda" and before the words "Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)", add the words "Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)".

[FR Doc. 94–2402 Filed 2–2–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–4832–8]

Review of National Ambient Air Quality Standards for Ozone

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of review.

SUMMARY: This notice announces the EPA's plans to review and revise the Air Quality Criteria for Ozone and Other Photochemical Oxidants (Criteria Document) as rapidly as possible and to complete review of the national ambient air quality standards (NAAQS) for ozone (O_3) as soon as possible thereafter.

The Clean Air Act (Act) requires periodic review and, if appropriate, revision of the NAAQS and of the air quality criteria on which they are based. The EPA completed its last formal review of the air quality criteria for O_3 in 1989. Based on that review, the EPA announced a final decision on March 9, 1993 not to revise the existing O_3 NAAQS.

Since early 1989, however, a substantial number of new studies on the health and environmental effects of O_3 have appeared in the peer-reviewed literature. The EPA is moving as rapidly as possible to review them, consistent with assuring a sound, scientifically-supportable decision.

The review process includes: (1) Reviewing and revising the Criteria Document; (2) reviewing the NAAQS through development of a Staff Paper based on the revised Criteria Document; (3) external review of Criteria Document and Staff Paper drafts by the Clean Air Scientific Advisory Committee (CASAC) of the EPA's Science Advisory Board, an independent panel of scientific experts, and by the public; and (4) examining implementation ramifications of changes to the O_3 NAAQS. The EPA intends to adhere to strict schedules for external review of Criteria Document and Staff Paper drafts consistent with a full opportunity for thorough scientific and public review, and to deny any requests for extensions of the public comment periods specified in this notice.

During this NAAQS review, the EPA intends to continue implementing programs designed to meet the current standards and the requirements of the Clean Air Act Amendments of 1990 to ensure continued improvement in air quality. The EPA is also examining options for implementing alternative O_3 NAAQS to ensure a smooth transition if a decision is made to revise the existing NAAQS.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Martin, Air Quality Management Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-5274.

SUPPLEMENTARY INFORMATION:

Background

Based on a Criteria Document issued by the Department of Health, Education and Welfare in 1970, the EPA promulgated the first NAAQS for photochemical oxidants under section 109 of the Act (36 FR 8186) in 1971. The primary and secondary NAAQS were both set at an hourly average of 0.08 parts per million (ppm) total photochemical oxidants not to be exceeded more than 1 hour per year.

In 1977, the EPA announced (42 FR 20493) the first review and updating of the 1970 Criteria Document in accordance with section 109(d)(1) of the Act. The EPA published a Criteria Document in 1978. Based on the revised Criteria Document and taking into account public comments on revisions proposed to the primary and secondary NAAQS in 1978 (43 FR 16962), the EPA announced revisions to the 1971 standards in 1979 (44 FR 8202). The primary standard was revised from 0.08 parts per million (ppm) to 0.12 ppm; the secondary standard was set identical to the primary standard; the chemical designation of the standards was changed from photochemical oxidants to O_3; and the form of the standards was revised from a deterministic form to a statistical form, which defines attainment of the standards as occurring when the expected number of days per calendar year with maximum hourly average concentrations greater than 0.12 ppm is equal to or less than one.

In 1982 (47 FR 11561), the EPA announced plans to revise the 1978 Criteria Document. In 1983, the EPA announced (48 FR 38009) that review of primary and secondary standards for O_3 had been initiated. The EPA subsequently provided a number of opportunities for public review and comment on drafts of the Criteria Document and associated Staff Paper (Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—Office of Air Quality Planning and Standards Staff Paper). After reviewing the draft Criteria Document in 1985 and 1986, the CASAC sent the Administrator a "closure letter" outlining key issues and recommendations and indicating that it was satisfied with the final draft of the 1986 Criteria Document.

Following closure, a number of scientific articles and abstracts were published or accepted for publication that appeared to be of sufficient importance concerning potential health and welfare effects of O_3 to warrant preparation of a supplement to the Criteria Document (Supplement). The CASAC, having already reviewed two drafts of the Staff Paper in 1986 and 1987, concluded that sufficient new information existed to recommend incorporation of relevant new information into a third draft of the Staff Paper.

The CASAC held a public meeting in 1988 to review a draft Supplement and the third draft Staff Paper. Major issues included: The definition of adverse health effects of O_3; the significance of health studies suggesting that exercising individuals exposed for 6 to 8 hours to O_3 levels at or below 0.12 ppm may experience lung inflammation and transient decreases in pulmonary function; the possibility that chronic irreversible effects may result from long-term exposures to elevated levels of O_3; and, the importance of analyses indicating that agricultural crop damage may be better defined by a cumulative seasonal average than by a 1-hour peak level of O_3. In its "closure letter" of 1989, the CASAC indicated that the draft Supplement and draft Staff Paper "provide an adequate scientific basis for the EPA to retain or revise primary and secondary standards for ozone."

On October 22, 1991, the American Lung Association and other plaintiffs filed suit under section 304 of the Act to compel the EPA to complete its review of the criteria and standards for O_3 under section 109(d)(1) of the Act [*American Lung Association* v. *Reilly*, No. 91–cv–4114 (JRB) (E.D.N.Y.)]. The U.S. District Court for the Eastern District of New York subsequently issued an order requiring the EPA to sign a **Federal Register** notice announcing its proposed decision on whether to revise the standards for O_3 by August 1, 1992 and to sign a **Federal Register** notice announcing its final decision by March 1, 1993.

On August 10, 1992 (57 FR 35542), the EPA published a proposed decision under section 109(d)(1) that revisions to the existing primary and secondary standards were not appropriate at that time. The notice explained in some detail (see 57 FR 35546) that the proposed decision would complete the EPA's review of information on health and welfare effects of O_3 assembled over a 7-year period and contained in the 1986 Criteria Document and the 1989

Supplement. The notice made clear that the Administrator did not take into account more recent studies on the health and welfare effects of O_3 because these studies had not been assessed in the 1986–1989 Criteria Document/Supplement, nor had they collectively undergone the rigorous, integrative review process (including CASAC review) required to incorporate them into a new criteria document. The proposed decision, therefore, was based on an evaluation of key studies published through early 1989 as contained in the 1986–89 Criteria Document/Supplement, the 1989 Staff Paper assessment of the most relevant information in these documents, and the advice and recommendations of the CASAC as presented both in the discussion of these documents at public meetings and in the CASAC's 1986 and 1989 "closure letters."

In view of the large number of recent scientific papers and ongoing research on the health and welfare effects of O_3, the August 10, 1992 notice also announced the EPA's intention to proceed as rapidly as possible with the next review of the air quality criteria and standards for O_3. On March 9, 1993 (58 FR 13008) the EPA published its final decision not to revise the current primary and secondary NAAQS for O_3. Because of the scientific and technical complexity of such assessments, the EPA had estimated that 2 to 3 years would be necessary to rigorously assess more than 1,000 new studies and incorporate key information into a revised criteria document, to evaluate the significance of the key information for decision-making purposes, to develop staff recommendations for the Administrator, and to provide appropriate opportunities for CASAC review and public comment. Given the potential importance of the new studies and the EPA's continuing concern about the health and welfare effects of O_3, the March 9, 1993 notice also indicated the Administrator's intention to move the review process ahead as quickly as possible and, if appropriate, to propose revisions of the standards at the earliest possible date.

Current Review Process/Schedule

Following publication of the March 9, 1993 decision, the Agency, in consultation with the CASAC and the Science Advisory Board, undertook a rigorous examination of the NAAQS review process designed to identify all measures that could be taken to accelerate its review of the criteria and standards for O_3 consistent with assuring a sound and scientifically-credible decision. As a result, the EPA has adopted a number of measures intended to accelerate the O_3 NAAQS review. These measures include: (1) Conducting review and revision of the Criteria Document and development of the Staff Paper and associated analyses (e.g., exposure analysis and health risk assessments) in a more concurrent fashion than in the previous NAAQS reviews; (2) adhering to strict schedules for external review of Criteria Document and Staff Paper drafts consistent with a full opportunity for thorough scientific and public review; (3) establishing a highly-expedited Agency review process with senior level management oversight and involvement throughout the process, as well as early discussion of possible options with other Federal agencies, including the Office of Management and Budget; and (4) reducing the volume of information included in the revised Criteria Document by focusing on the most important new studies and setting a date beyond which new studies will not be included.

The EPA's current O_3 NAAQS review schedule incorporates the measures cited above. The Agency's target date for completion of the Criteria Document and Staff Paper is mid-1995, with proposal of changes to the O_3 NAAQS, if appropriate, in mid-1996 and promulgation in mid-1997. Table 1 outlines key milestone dates for this accelerated schedule.

As indicated in Table 1, there are a number of opportunities for public comment throughout the process. The EPA encourages involvement of interested parties and is providing this advance notice to alert potential participants in the review that adhering to the schedule will require some departures from past practices.

TABLE 1

Major milestones	Tentative dates
CASAC Subcommittee Meeting on Exposure Assessment Methods.	December 1993.
CASAC and Public Comment Period for Criteria Document (CD) (90 days).	February to May 1994.[1]
CASAC Subcommittee Meeting on Risk Assessment Methods.	March 1994.
CASAC Meeting on CD.	July 1994.
Comment Period on Staff Paper (SP) (60 days).	September to October 1994.
CASAC Meeting on SP.	October 1994.
Public Comment Period on Revised CD and SP (90 days).	Early 1995.
CASAC Meeting on Revised CD and SP.	Mid-1995.
Agency Development of Regulatory Decision/Proposal Package Draft.	Mid-1995 to late 1995.
Office of Management and Budget Review of Proposal Package.	Early 1996.
Publication of Proposal in **Federal Register**.	Mid-1996.
Public Comment Period on Proposal (90 days).	Mid-1996.
CASAC Meeting to Review Proposal.	Late 1996.
Regulatory Decisions and Final Package Draft Completed.	Early 1997.
Office of Management and Budget Review of Promulgation Package.	Early 1997 to mid-1997.
Publication of Promulgation Notice in **Federal Register**.	Mid-1997.

[1] For a notice of availability of external review draft, see 59 FR 4278, January 31, 1994.

In particular, the EPA has often granted requests for extensions of public comment periods in previous reviews; in order to meet the accelerated schedule for the O_3 NAAQS review, however, the EPA intends not to grant such extensions during this review. Accordingly, potential participants in the review should take note of the process outlined in this notice and be prepared to respond promptly when opportunities to comment are offered.

Given the scientific and technical complexity of the issues likely to be involved in the O_3 review, the diversity of scientific opinion that has characterized previous reviews of the criteria and standards for O_3, and the need to ensure that its ultimate decision is soundly based, the EPA cannot, of course, provide any absolute assurance that it will meet all of the interim milestone dates indicated in Table 1. Completion of the necessary steps in a timely manner is also predicated upon the availability of adequate resources during the review process. However, the Administrator has emphasized a high priority on meeting the accelerated schedule outlined in this notice.

To that end, the review process is well under way. The EPA initiated action to update the air quality criteria for O_3 in August 1992 (57 FR 38832). It

held two peer-review workshops on draft health effects chapters of a revised Criteria Document (58 FR 35454) in July 1993. Additional workshops on draft air quality and ecological effects chapters (58 FR 48063) were held in September 1993. Since then, the EPA has discussed the schedule and process outlined in this notice with the CASAC (58 FR 59034). The EPA is also conducting exposure and risk analyses. A subcommittee of the CASAC met on December 16, 1993 to review methodologies (58 FR 63345). A further subcommittee meeting on risk analysis is planned for spring 1994.

Implementation

It is important to stress that while conducting this review, the EPA remains committed to implementing the existing O_3 NAAQS in accordance with the Clean Air Act Amendments of 1990 (CAAA). During the review, the EPA will continue to work with States to implement emission control strategies required by the CAAA to meet the existing O_3 NAAQS. These efforts include State and Federal actions to reduce emissions of volatile organic compounds and nitrogen oxides, which act as precursors to O_3 formation in the troposphere. The EPA will make every effort to maintain implementation schedules consistent with requirements of the CAAA to ensure continued improvement in air quality.

As part of the review, the EPA is examining the ramifications of any changes to the NAAQS on current implementation efforts. If appropriate, new implementation rules and guidelines will be considered for alternative NAAQS. The EPA also is reviewing options to ensure a smooth transition for implementation of any new O_3 NAAQS in the event a decision is made to revise the current O_3 NAAQS.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: January 27, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–2487 Filed 2–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 68

[CC Docket No. 93–268, RM–7815, RM–6147; FCC 93–484]

Connection of Customer-Provided Terminal Equipment to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to amend rules which regulate the terms and conditions under which customer-provided terminal equipment may be connected to the telephone network. The proceeding was initiated by petitions for rulemaking filed by Southwestern Bell Telephone Company (SWB) and Ameritech Operating Companies (Ameritech) who ask that regulations governing switched digital services be added. The effect of the proposed rules would be to promote rapid exploitation of switched digital technology. We propose also to provide for a registration revocation procedure which should greatly enhance our ability to enforce applicable rules as well as the Telecommunications Trade Act of 1988; and we take this opportunity to propose clarifications to other rules.

DATES: Comments were to be submitted on or before January 13, 1994, and replies by January 28, 1994; however, those dates have been extended to February 10, 1994 for comments and February 25, 1994 for replies.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, with copy to William H. von Alven, FCC, Mail Stop 1600B2, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William H. von Alven, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1833.

SUPPLEMENTARY INFORMATION: This summarizes the NPRM in CC Docket 93–268, RM–7815, and RM–6147 (FCC 93–484) adopted October 22, 1993 and released November 22, 1993, supplemented by an Errata, and Order Extending Comment Period released January 12, 1994 (DA 94–46). Persons affected by part 68 practice and procedure are urged to review the full texts of both the NPRM and Errata, and the supporting file, which are available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC. Copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857–3800.

Paperwork Reduction Act

Reporting and recordkeeping activities needed to comply with the proposed rules are usual and customary.

Analysis of Proceeding

1. By this NPRM we contemplate amending parts 2 and 68 of the rules, 47 CFR parts 2 and 68. A purpose of part 68 is to maintain uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment and associated wiring. This proceeding was initiated by two petitions for rulemaking, one filed by SWB (RM–7815) and the other by Ameritech (RM–6147).

2. SWB requests that part 68 be amended to include the regulation of terminal equipment connected to the two-wire Basic Rate Access (BRA) interface and to the Primary Rate Access (PRA) interface provided by Integrated Services Digital Network (ISDN) access technology. BRA consists of one or two 64 Kbps information channels with a 16 Kbps channel for dialing and network access information. The 1.544 Mbps PRA consists of 23 64 Kbps information channels and the 64 Kbps dialing and network access channel. ISDN is in a developmental phase, being deployed these last few years in an experimental mode. The Public Notice of SWB's petition elicited comments from eight parties and reply comments from three. There was overwhelming support for including this service in part 68 in order to promote, on a nationwide and worldwide basis, rapid exploitation of this technology with minimum mandatory criteria for connection of CPE (customer premises equipment). Thus, we propose for comment technical standards for including this service in part 68 in supplement to the existing standards for non-switched leased-line digital services which were added in 1985.

3. Commenting on SWB's petition, AT&T recommends (a) that part 68 rules covering PRA not be limited to the two-wire ISDN BRA service but also authorize terminal equipment connected to the 4-wire ISDN PRA (1.544 Mbps) interface pursuant to performance and compatibility standards adopted by ANSI (American National Standards Institute); (b) that amendments to part 68 provide equipment specifications for both PRA

and BRA interfaces: (c) that § 68.308(h)(2) be amended to apply its limitations on encoded analog content to PRA terminal equipment comparable to the limitations suggested by SWB for BRA terminal equipment; and (d) that the signaling interference requirements in § 68.314(d)(2) apply also to ISDN terminal equipment. The rules we present for comment reflect those recommendations.

4. AT&T observes also that SWB's petition would add a new § 68.310(m) to introduce a "longitudinal-to-metallic" (L–M) balance requirement for equipment connected to the ISDN interface. AT&T notes that the L–M balance concept was rejected by the Commission in previous rulemakings in favor of the "metallic-to-longitudinal" (M–L) balance methodology currently in the rules. The L–M methodology is considered to be a performance measure which is not a primary concern of part 68, whereas the M–L balance requirement squarely addresses crosstalk interference that terminal equipment may induce in cables running to the central office, which is a harm to the network and thus within part 68's purview. Thus, we propose adding to part 68 limitations on encoded analog content for equipment connected to the ISDN interface.

5. AT&T states also that though-gain limitations in § 68.308(b)(5) should be established for ISDN services. We understand that this is a current project for the Telecommunication Industry Association's (TIA's) TR–41 Committee, whom we anticipate will provide appropriate recommendations.

6. The types of plug-jack connectors to be used for ISDN services engendered comment. Ameritech says that the ANSI standard for BRA proposes an eight-position non-keyed jack in which two positions are for the tip and ring connections to the service itself, and the remaining six positions are reserved. Ameritech offers ISDN BRA via the standard RJ11C jack which provides connections for two wires, although the jack itself can accommodate up to six wires. Most ISDN compatible equipment can accommodate such a connection, so there is no need to require the eight-position jack, states Ameritech, who believes that manufacturers who "build-to" the eight-position interface could provide connection to the type RJ11C through a simple six-position to eight-position double-male adapter. US West recommends that the jack type SJA–11 (8-position) proposed by ECSA (the Exchange Carriers Standards Association's T1E1 Technical Subcommittee) be approved by the Commission's tariff implementation procedure. We solicit comments on these proposals for ISDN BRA and PRA interface connectors and for suitable connectors for the Public Switched Digital Services (PSDS). It would be helpful also if interested parties would, as requested in n.7 of the NPRM, offer comments on the recommendations of ECSA for network connectors for ISDN BRA and PSDS.

7. The Public Notice of Ameritech's petition produced two comments and two reply comments. Ameritech petitions for amendment of part 68 to include terminal equipment that connects to PSDS. We request comment. As the result of joint comments by Mountain States Telephone Company, Northwestern Bell Telephone Company and Pacific Northwestern Bell Telephone Company, equipment standards for a four-wire 56 Kbps service are also included for comment. It is important to recognize that all three technologies (56 and 64 Kbps time compression and four-wire 56 Kbps switched services) are call-compatible, and a performance and compatibility standard for the three has recently been published by TIA. Not discussed in the pleadings is the fact that a new technology known as "inverse multiplexing" or "bandwidth on demand" is being used which permits customers to utilize PSDS and ISDN BRA technologies to order wider bandwidths in multiples of 56 or 64 Kbps. Commenters should address whether inverse multiplexing utilizing such channels and other bandwidths require consideration under part 68.

8. In outlining the intent of newly-proposed part 68, the Commission stated in its First Supplemental Notice, released April 3, 1973, 40 F.C.C.2d 315, 316 (1973) that "[r]egistration would constitute authorization for the equipment to be directly connected to the switched telephone network. However, in appropriate cases, registration could be revoked." But the rules do not include part 68 equipment authorization revocation procedures which can be relied upon; therefore, we propose adoption of rules which detail the circumstances under which equipment registrations may be revoked and which define equipment revocation procedures, including automatic denial of equipment authorization of the same product for a period of six months from the date of revocation. The proposed revocation procedure tracks closely established Commission procedure for Notice of Apparent Liability (NAL) for assessment of a monetary penalty (47 CFR 1.80 and 1.89). Revocation of an equipment registration may be imposed in addition to or in lieu of an amount in forfeiture pursuant to section 1.80 of the rules. Therefore, we propose that a Notice of Intent to Revoke may be served concurrently with and as part of a NAL. In the case of joint NAL and Intent to Revoke, § 1.80 of the rules would govern all procedural issues. In those cases where a material dispute of fact is involved, the Commission would, if appropriate, designate the proceeding for hearing before an administrative law judge. The registration revocation procedure is expected to greatly enhance our ability to enforce part 68, as well as the Telecommunications Trade Act of 1988 which requires that all telecommunications equipment imported into the United States meet the requirements of the Commission's rules and regulations. We seek comment on these procedures which are set forth in detail in the NPRM and proposed rules.

Regulatory Flexibility Act

No significant impact.

Ex Parte Presentations

This is a nonrestricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as required by Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Legal Basis

Authority for this action is contained in 47 U.S.C. 151, 154(i), 154(j), 201–205, 225 and 403.

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 68

Communications equipment, Integrated Services Digital Network, Public Switched Digital Services, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–2107 Filed 2–2–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–135; Notice 1]

RIN 2137–AC32

Customer-Owned Service Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to require operators of gas distribution pipelines who do not maintain customer-owned service lines to advise their customers of the proper maintenance of these gas lines and of the potential hazards of not properly maintaining these gas lines. This proposed rulemaking, in response to a statutory mandate, is intended to ensure that homeowners and other owners of customer-owned service lines are made aware of the requirements for maintenance of those lines; the resources known to the operator that could properly aid the customer in doing such maintenance; any information that the operator has concerning the operation and maintenance of its service lines that could aid customers; and the potential hazards of not maintaining customer-owned service lines.

DATES: Interested persons are invited to submit comments by April 4, 1994. Late filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement or argument made.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, Room 8421, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in room 8421 between 8:30 a.m. and 4:30 p.m. each business day. Non-federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Christina M. Sames, (202) 366–4561, regarding the content of this document, or the Dockets Unit (202) 366–5046 for copies of this document or other materials in the docket.

SUPPLEMENTARY INFORMATION:

Background

The pipeline safety regulations in 49 CFR 192.3 define a gas service line as a distribution line that transports gas from a common source of supply to (1) a customer meter or the connection to a customer's piping, whichever is farther downstream, or (2) the connection to a customer's piping if there is no customer meter. The source of supply for most gas services is a main commonly located in the street. For service lines to homes and buildings, the customer meter, which measures the transfer of gas from the operator to the consumer, is commonly located adjacent to (outside or inside) an exterior wall. A service line may also end at a customer meter adjacent to end-use gas equipment. For all of the above installations, the operator is responsible for compliance with part 192 standards from the common source of supply (e.g., the main) to the end of the service line.

Customer-Owned Service Lines

Not all customer meters are located adjacent to a home or building wall or end-use equipment. Some customer meters are located at property lines or at other locations more convenient for the gas distribution operator or for the customer. In such cases, the service line ends at the meter and the pipe running from the outlet of the meter to the exterior wall or end-use equipment is called a customer-owned service line.

Instances also exist where there is no customer meter or the operator-owned service line extends beyond the meter to the connection to a customer's piping. In such cases, the pipe running from this connection to the exterior wall or end-use equipment is called a customer-owned service line.

Customer-owned service lines are also known as "yard lines" and "fuel lines". A "farm tap" is a customer-owned service line that begins at a customer meter, usually adjacent to a gas transmission line, and runs (often a considerable distance) to a single consumer. For the purposes of this notice, each of the above situations is referred to as a customer-owned service line.

Customer-owned service lines are thought to comprise 12 to 17 percent of the piping that transports natural gas from distribution mains to homes, businesses, and other consumers. These lines are predominantly found in the states of Arizona, Arkansas, Florida, Iowa, Kentucky, Louisiana, New Mexico, Ohio, Oklahoma, Texas, and West Virginia. Many states have few, if any, customer-owned service lines because the customer meter is adjacent to the home or building wall or the state regulatory agency has required the distribution operator to be responsible for operation and maintenance of the service line up to the home or building wall, regardless of where the meter is placed. These states include California, Connecticut, Hawaii, Idaho, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, South Carolina, South Dakota, Utah, Virginia, Washington, Wisconsin, and Wyoming.

Federal pipeline safety regulations do not cover customer-owned service lines, although a few states have issued regulations and some gas distribution operators voluntarily maintain these lines to part 192 standards. In most states, the material, design, construction, corrosion control, testing, and maintenance of customer-owned service lines is left to the discretion of people who may not be familiar with part 192 requirements for service lines. This has resulted in instances of improper installation and minimal or no maintenance of these lines.

Over the last five years, one-third of all pipeline-related fatalities reported to the Department of Transportation involved distribution lines running from mains to homes and other buildings. An unregulated customer-owned service line buried downstream of a customer meter is prone to the same environmental stresses (corrosion and earth settlement) and excavation damage hazards as a regulated service line buried upstream of a customer meter. However, because of its proximity to homes, businesses and schools, the unregulated segment of a customer-owned service line buried downstream of a customer meter poses a greater risk to people and property than the regulated segment of the line buried upstream of the meter.

The safety of customer-owned service lines first emerged as an issue after a series of five natural gas incidents occurred during a 7-month period beginning September 16, 1988, in the Kansas City-Topeka area. These instances resulted in four fatalities, twelve injuries, and the destruction of four homes. In three of those incidents, the failures were attributed to corrosion on unprotected customer-owned service lines.

As a result of these incidents, Kansas, Missouri, Michigan, and New York made significant changes to their state's pipeline safety regulations. These

changes included extending the state regulatory authority over service lines to the building wall. Under the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1671 *et seq.*), states may adopt more stringent safety regulations than the Federal regulations if the state regulations are not incompatible with federal regulations.

In addition to its response to the accidents by extending regulatory authority to include customer-owned service lines, the Missouri Public Service Commission also required the operator to replace some 265,000 bare steel gas lines running from the main to the building wall, of which some 175,000 were fully or partly owned by the customer. The Kansas City Corporation Commission required the operator to perform periodic leakage surveys of all customer-owned service lines and to repair or replace all lines round to be leaking.

Statutory Mandate

Section 115(a) of the Pipeline Safety Act of 1992 (the Act, Pub. L. 102–508, October 24, 1992) amended the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1685) to require the Secretary of Transportation to—

> * * * Issue regulations requiring operators of natural gas distribution pipelines which do not maintain customer-owned service lines up to building walls to advise their customers of the requirements for maintenance of those lines, any resources known to the operator that could aid customers in doing such maintenance, any information that the operator has concerning the operation and maintenance of its lines that could aid customers, and the potential hazards of not maintaining service lines.

Anecdotal data available to RSPA indicates that some of the petroleum gas systems covered under § 192.11 include customer-owned service lines where the material, design, construction, corrosion control, testing and maintenance is left to the discretion of people who may not be familiar with part 192 requirements for service lines. RSPA invites public comment on (1) Whether customer-owned service lines occur in petroleum gas systems subject to § 192.11 and (2) If so, whether the petroleum gas systems have been properly installed and periodically maintained. Commenters are requested to support their responses with leak and incident data that includes information on personal injuries, deaths, property and environmental damages.

AGA Petition

The American Gas Association (AGA) has petitioned RSPA to issue immediately a proposed rule to establish the notification regulations mandated in section 115 of the Act (P–50, September 1, 1993). In its petition, AGA expresses concern that, lacking federal guidance, state and local authorities may move forward and adopt notification requirements that could make compliance with federal regulations difficult.

AGA has requested RSPA to incorporate the following language to satisfy the notification requirements for operations of customer-owned service lines:

> (a) Each operator meeting the applicability requirements of paragraph (c) (of this section) shall provide notification to customers covering the maintenance of customer-owned lines. At minimum, this notification shall advise those customers:
>
> (1) That they own and are responsible for the maintenance of customer-owned lines;
>
> (2) Of the requirements for maintenance of those lines in accordance with paragraph (b) of this section;
>
> (3) Who should be contacted to assist in the maintenance of customer-owned lines;
>
> (4) Of information that the operator has concerning the maintenance of its lines that could aid the customer in performing such maintenance; and
>
> (5) That periodic maintenance of customer-owned lines is necessary in order to avoid potential safety problems, such as gas leakage.
>
> (b) If the applicable codes and standards do not address maintenance of those lines, the information that operators provide under paragraph (a)(4) of this section must describe the maintenance requirements for customer-owned lines.
>
> (c) The notification requirements in paragraph (a) (of this section) apply to operators for which one or more customers have responsibility for maintenance of a substantial portion of the primary underground natural gas supply pipe between the operator's main and the foundation wall of the customer's premise, or its equivalent in those installations where the supply piping does not enter a building but rather goes directly to end-use equipment located outdoors.

AGA's petition is on file in the docket and was taken into consideration during development of this notice of proposed rulemaking.

Proposals

Federal gas pipeline safety standards do not require gas pipeline operators to maintain customer-owned service lines. In many cases, the owner of the customer-owned service line is not aware he or she is responsible for the maintenance of the customer-owned service line or what those maintenance responsibilities are. To address these concerns, AGA's petition, and the statutory mandate, RSPA proposes to revise § 192.3 to add a definition of customer-owned service lines, and to add § 192.16 concerning notification requirements for customer-owned service lines to subpart A of 49 CFR part 192.

At this time, RSPA is proposing to apply the notification requirements to operators of petroleum gas systems covered under § 192.11. Thus, for the purpose of this discussion, the word "operator" will apply to those operators of natural gas and petroleum gas distribution systems that do not maintain customer-owned service lines up to the home or building wall or to the end-use equipment.

RSPA is aware there are situations where the meter is adjacent to, but not at, the home or building wall or the end-use equipment. In these instances, the operator is responsible for the pipeline up to the meter, and the customer is responsible for the small portion of buried pipeline from the outlet of the meter to the home or building wall or to the end-use equipment. At this time, RSPA is proposing to apply the notification requirements to these sections of pipeline when the operator does not voluntarily maintain these sections of pipeline. RSPA invites public comment on whether these short sections of customer-owned service line have been properly installed and whether they are periodically maintained. RSPA believes that some of these sections were installed and are voluntarily maintained by the operator, even though they are the responsibility of the customer. Commenters are requested to support their responses with leak and incident data that includes information on personal injuries, deaths, and property damages.

The following discussion covers the requirements listed within section 115(a) of the Act and how RSPA proposes to address them.

Maintenance Requirements for Customer-Owned Service Lines

RSPA requires operator-owned service lines to be operated and maintained to 49 CFR part 192 standards. These pipeline safety standards include leak detection surveys and corrosion control. Subpart I details the requirements for corrosion control, and subpart M details leak detection surveys and other maintenance requirements. Local codes and standards may also address operation and maintenance requirements. This notice proposes that operators provide to the owners of customer-owned service lines general information on these safety requirements. The proposal does not require operators to take over the maintenance of these lines.

Under the proposal, operators would be allowed to use any written means to provide actual notification of the required information to customers. RSPA anticipates most operators will provide notice through inserts mailed to the customer and flyers hand delivered by the meter readers.

Maintenance Resources

Many resources are available to assist owners of customer-owned service lines in obtaining information to assure effective service line maintenance, including information supplied by the operator. The sources referenced below can provide general information on corrosion control and leakage surveys, and may be able to provide an actual listing of gas distribution contractors (including plumbers) or other individuals who could perform these maintenance requirements. The addresses and telephone numbers listed are current to the best of RSPA's knowledge.

The State Licensing Board for Plumbers and State Plumbers' Associations

The state licensing board for plumbers and state plumbers' associations can provide owners of customer-owned service lines with a listing of qualified, independent contractors who perform leakage surveys, gas piping repair and replacement, and valve repair and replacement.

The Gas Piping Technology Committee (GPTC) Guide for Gas Transmission and Distribution Piping Systems, Volume 1

The GPTC guide contains information and methods to assist gas pipeline operators in complying with the federal pipeline safety regulations by providing "how to" information related to the standards. The GPTC Guide contains minimum federal safety standards together with the design recommendations, material reference, and recommended practices of the GPTC.

Gas Piping Technology Committee, AGA, 1515 Wilson Boulevard, Arlington, VA 22209, (703) 841–8454

The National Association of Corrosion Engineers (NACE)

NACE publishes a standard recommended practice to present procedures and practices for achieving effective control of external corrosion on buried or submerged metallic piping systems. This recommended practice describes the use of electrically insulating coatings, electrical isolation, and cathodic protection as corrosion control methods. The practice also contains specific provisions for the application of cathodic protection to existing bare, existing coated, and new piping systems.

National Association of Corrosion Engineers P.O. Box 218340, Houston, TX 77218–8340, (713) 492–0535

Federal Gas Pipeline Safety Organizations

The regional offices of the Federal Office of Pipeline Safety can provide an owner of a customer-owned service line with a copy of the federal pipeline safety regulations (49 CFR part 192) that operators of service lines follow, the booklet "Guidance Manual for Operators of Small Gas Systems," which provides a general overview of compliance responsibilities under federal pipeline safety regulations, and verbal information on proper maintenance for customer-owned service lines:

Office of Pipeline Safety, Eastern Region, U.S. Department of Transportation, 400 Seventh Street SW., room 5413, Washington, DC 20590, (202) 366–4580
Jurisdictional authority over the District of Columbia and the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.

Office of Pipeline Safety, Southern Region, 1720 Peachtree Road NW., Suite 426 North, Atlanta, GA 30309, (404) 347–2632
Jurisdictional authority over Puerto Rico and the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee

Office of Pipeline Safety, Central Region, 911 Walnut Street, room 1811, Kansas City, MO 64106, (816) 426–2654
Jurisdictional authority over the states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin

Office of Pipeline Safety, Southwest Region, 2320 La Branch, room 2116, Houston, TX 77004, (713) 750–1746
Jurisdictional authority over the states of Arizona, Louisiana, New Mexico, Oklahoma and Texas

Office of Pipeline Safety, Western Region, 555 Zang Street, 2nd floor, Lakewood, CO 80228, (303) 969–5150
Jurisdictional authority over the states of Alaska, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming

State Pipeline Safety Organizations

The following state pipeline safety organizations can provide an owner of a customer-owned service line with a copy of the federal and state pipeline safety regulations that operators of service lines follow, written or verbal information on maintenance requirements for customer-owned service lines, and regional sources of additional information.

Alabama Public Service Commission, PO Box 991, Montgomery, AL 36101–0991, (205) 242–5778

Arizona Corporation Commission, 1200 West Washington Street, Phoenix, AZ 85007, (602) 542–3316

Arkansas Public Service Commission, PO Box 400, Little Rock, AR 72203–0400 (501) 682–5705

California Public Utilities Commission, 1145 Market Street, Second Floor, San Francisco, CA 94103, (415) 557–3304

Colorado Public Utilities Commission, Logan Tower-Office, Level 2, Room 340, 1580 Logan Street Denver, CO 80203, (303) 894–2000

Connecticut Department of Public Utility Control, One Central Park Plaza, New Britain, CT 06051, (203) 827–1553

Delaware Public Service Commission, 1560 South Dupont Highway, PO Box 457, Dover, DE 19903–0457, (302) 739–3233

Public Service Commission, District of Columbia, 450 5th Street NW., Suite, 820, Washington, DC 20001, (202) 626–5156

Bureau of Gas Regulation, Florida Public Service Commission, 101 East Gaines Street, Room 330, Tallahassee, FL 32301–0868, (904) 488–8501

Georgia Public Service Commission, 244 Washington Street SW., Atlanta, GA 30334, (404) 656–7490

Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, IL 62794–9280, (217) 785–1165,

Indiana Utility Regulatory Commission, 302 West Washington Street, Suite E 306, Indianapolis, IN 46204, (317) 232–2717

Bureau of Rate & Safety Evaluation Utilities, Division, Iowa Department of Commerce, Lucas State Office Building, Des Moines, IA 50319, (515) 281–5546

Kansas Corporation Commission, 1500 SW Arrowhead, Road, Topeka, KS 66604–4027, (913) 271–3171

Kentucky Public Service Commission, 730 Schenkel Lane, PO Box 615, Frankfort, KY 40602, (502) 564–3940

Office of Conservation, Louisiana Department of Natural Resources, PO Box 94275, Baton Rouge, LA 70804–9275, (504) 342–5585

Maine Public Utilities Commission, State House Station 18, 242 State Street, Augusta, ME 04333, (207) 289–3831

Maryland Public Service Commission, The American Building, 11th Floor, 231 East Baltimore Street, Baltimore, MD 21202, (410) 333–6079

Massachusetts Department of Public Utilities, Saltonstall Building, Room 1208, 100 Cambridge Street, Boston, MA 02202 (617) 727–3537

Michigan Public Service Commission, 6545 Mercantile Way, PO Box 30221, Lansing, MI 48909, (517) 334–6384

Minnesota Department of Public Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612) 296–9636

Mississippi Public Service Commission, PO Box 1174, Jackson, MS 39215–1174, (601) 961–5475

Missouri Public Service Commission, Truman State Office Building, Room 530 PO Box 360, Jefferson City, MO 65102, (314) 751–3456
Department of Public Service Regulations, Montana Public Service Commission, 1701 Prospect Avenue, PO Box 202601, Helena, MT 59620–2601, (406) 444–6182
Nebraska State Fire Marshal, 246 South 14th, Lincoln, NE 68508, (402) 471–2027
New Hampshire Public Utilities Commission, Building #1, 8 Old Suncook Road, Concord, NH 03301, (603) 271–2431
New Jersey Board of Regulatory Commissioners, Two Gateway Center, Newark, NJ 07102, (201) 648–2204
New Mexico State Corporation Commission, PO Drawer 1269, Santa Fe, NM 87504–1269, (505) 827–3767
Investigation Section, NY Public Service Commission, #3 Empire State Plaza, Albany, NY 12223, (518) 474–5453
North Carolina Utilities Commission, 430 North Salisbury Street, PO Box 29510, Raleigh, NC 27626–0510, (919) 733–6000
North Dakota Public Service Commission, State Capitol Building, 12th Floor, Bismarck, ND 58505, (701) 224–2413
Public Service Commission of Nevada, 727 Fairview Drive, Carson City, NV 89710, (702) 687–6040
Ohio Public Utilities Commission, 180 East Broad Street, 12th Floor, Columbus, OH 43266–0573, (614) 644–8983
Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, OK 73105, (405) 521–2258
Oregon Public Utility Commission, 550 Capitol Street NE., Salem, OR 97310, (503) 378–6760
Pennsylvania Public Utility Commission, T&S Building, Room 412, PO Box 3265, Harrisburg, PA 17105–3265, (717) 787–1061
Puerto Rico Public Service Commission, PO Box 870, San Juan, PR 00919–0870, (809) 763–0625
Rhode Island Division of Public Utilities, 100 Orange Street, Providence, RI 02903, (401) 277–3500
South Carolina Public Service Commission, PO Drawer 11649, Columbia, SC 29211, (803) 737–5145
Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, TN 37243–0505, (615) 741–2844
Transportation/Gas Utilities Division, RR Commission of Texas, Capitol Station, PO Box 12967, Austin, TX 78711–2967, (512) 463–7058
Division of Public Utilities, Utah Department of Commerce, 160 East 300 South, PO Box 45807, Salt Lake City, UT 84145–0807, (801) 530–6787
Vermont Department of Public Service, State Office Building, 120 State Street, Montpelier, VT 05620, (802) 828–2811
Division of Energy Regulation, Virginia State Corporation Commission, PO Box 1197, Richmond, VA 23209, (804) 371–9264
Washington Utilities and Transportation Commission, PO Box 47250, Olympia, WA 98504–7250, (206) 586–1154
Public Service Commission of West Virginia, 201 Brooks Street, PO Box 812, Charleston, WV 25323, (304) 340–0473
Gas, Water & Federal Intervention Division, Public Service Commission of Wisconsin, 4802 Sheboygan Avenue, PO Box 7854, Madison, WI 53707, (608) 266–8128
Wyoming Public Service Commission, 700 West 21st Street, Cheyenne, WY 82002, (307) 777–7427

Operation and Maintenance Information

This notice proposes to require gas distribution operators to advise customers of any information that the operator has concerning the operation and maintenance of its lines that could aid customers. This information could include the following:

Excavation damage prevention: Excavation damage is the largest single cause of gas pipeline incidents. Section 192.614 currently requires gas pipeline operators to notify the public in the vicinity of their pipeline on how to prevent damage to the pipeline from excavation activities. Section 192.614 currently exempts pipelines in class 1 and 2 locations and pipelines in class 3 locations which are marked in accordance with § 192.707. However, in a pending rulemaking ("Excavation Damage Prevention Programs for Gas, Hazardous Liquids and Carbon Dioxide Pipelines", Docket 101, 53 FR 24747, June 30, 1988), RSPA has proposed removing these exemptions.

Type of pipe: Different pipeline materials require different maintenance procedures. An operator's knowledge of the environmental conditions affecting the service pipe connected to the customer-owned service line may assist the owner in the maintenance of the customer-owned service line.

Age of the pipe: The installation date of customer-owned service lines, installed by individuals other than the operator, may not be known. However, many operators will have a record of the date gas service was initially established to the customer. In such cases, operators may reasonably assume that the installation date of the customer-owned service line is approximately the date of initial gas service. This information may then be relayed to the customer to assist in estimating the condition of the pipeline.

Potential Hazards: This notice proposes to require an operator to inform customers of the potential hazards of not maintaining a customer-owned service line. Improper maintenance or lack of periodic maintenance of customer-owned service lines may result in corrosion of metallic pipeline materials, separation of piping components, gas leaks, property damage, environmental damage, personal injury, and even death.

Regulatory Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). A regulatory evaluation is available for review in the docket.

Executive Order 12612

The proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

This proposed rule would apply to operators of natural gas and petroleum gas distribution systems. Small gas distribution systems are characterized in this proposal as distribution systems serving fewer than 10,000 customers. They include master meter systems, which usually serve mobile home parks, housing projects and apartment complexes, and public, private, and municipal natural gas distribution systems.

Master meter systems, as defined in § 191.3, are pipeline systems for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

RSPA has determined that master meter operators will not be affected by this notice of proposed rulemaking because the master meter operator generally owns the complete gas distribution system. Thus, the master meter operator is responsible for the pipeline from the point of purchase to the ultimate customer.

A draft regulatory evaluation has been prepared to determine the economic impact of this proposed rule on public, private, and municipal gas distribution systems. Based on the facts available, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This

certification is subject to modification as a result of a review of comments received in response to this proposal.

Paperwork Reduction Act

The information collection requirements associated with this notice of proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 U.S.C. Chapter 35 under the following:

Administration: Department of Transportation, Research and Special Programs Administration;
Title: Customer-owned service line information dissemination;
Need for Information: To reduce the number of incidents and resulting deaths, injuries, property, and environmental damage caused by improper maintenance of customer-owned service lines;
Proposed Use of Information: To advise owners of customer-owned service lines of the proper maintenance of these gas lines and of the potential hazards of not properly maintaining these lines;
Frequency: Occasionally;
Burden Estimate: $500,000 initially, $50,000 annually thereafter;
Respondents: Gas distribution operators;
Form(s): N/A;
Average Burden Hours per Respondent: minimal.

For further information contact: The Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735. Comments on the proposed information collection requirements should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk Officer for Department of Transportation, Research and Special Programs Administration. It is requested that comments sent to OMB also be sent to the RSPA rulemaking docket for this proposed action.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.3 would be amended by adding the following definition to read as follows:

§ 192.3 Definitions.

As used in this part:

Customer-Owned Service Line means a pipeline that transports natural gas or petroleum gas from a service line to (1) an exterior wall of a building, or (2) end-use equipment. "Farm taps" are customer-owned service lines which begin at a customer meter, usually adjacent to a gas transmission line, and run to a single consumer.

* * * * *

3. Section 192.16 would be added to subpart A to read as follows:

§ 192.16 Customer-owned service lines.

(a) Each operator of a natural gas or petroleum gas distribution system that does not maintain buried customer-owned service lines up to the building wall or to the end-use equipment to part 192 standards, shall provide written notification to the customer:

(1) That the customer owns and is responsible for the maintenance of the customer-owned service line;

(2) Of the essential elements for proper maintenance of the customer-owned service line, such as those listed in subpart M of this part or those listed in applicable local building codes;

(3) Of available resources that could aid the customer in obtaining maintenance assistance, such as the gas pipeline operator, the state licensing board for plumbers and state plumbers' associations, Federal and state gas pipeline safety organizations, the local building code agencies, and appropriate leak detection, gas utility, and corrosion protection contractors;

(4) Of any information that the operator has concerning the operation and maintenance of the customer-owned service line that could aid the customer, such as information on excavation damage prevention, local codes and standards (when applicable), and the age, location, and material of the customer-owned service line; and

(5) The potential hazards of not maintaining the customer-owned service line, such as corrosion and gas leakage.

(b) An operator shall provide the notification required in paragraph (a) of this section:

(1) Before (enter date 6 months after date of publication of final rule) for existing customers; and

(2) Before (enter date 6 months after date of publication of final rule) or within 30 days from date the gas service line is placed in service for new customers, whichever is later.

(c) Each operator must keep a record of the written notifications made under the requirements of paragraph (a) of this section.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–2399 Filed 2–2–94; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 59, No. 23
Thursday, February 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 28, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 494–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Food and Nutrition Service
7 CFR Part 226—Child and Adult Care Food Program
FNS–82, 341, 342, 343, 344, 345, 345–1, 430, 431, and 433
Recordkeeping, On occasion, Monthly, Annually
Individuals or households; State or local governments; Business or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 725,846 responses; 1,558,030 hours
Winnie McQueen, (703) 304–2607

Extension

• Agricultural Marketing Service
Specified Commodities Imported Into the United States Exempt from Import Requirements, 7 CFR parts 944, 980, and 999
FV–6
On occasion
Business or other for-profit; Non-profit institutions; Small businesses or organizations; 2,000 responses; 340 hours
Mark Hessel, (202) 720–3923

• Food and Nutrition Service
Integrated Quality Control Review Worksheet
FNS–380
Recordkeeping; On occasion
Individuals or households; State or local governments; 68,202 responses; 615,428 hours
Charles L. Simmons, (703) 305–2471

Reinstatement

• Food and Nutrition Service
Special Supplemental Food Program for Women, Infants, and Children (WIC): Food Cost Containment Requirements
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; 17 responses; 170 hours

New Collection

• Food Safety and Inspection Service
Ante Mortem and Post Mortem Inspection
FSIS 6500–1, –2, –3, 6700–2. MP 528
On occasion; Daily and hourly
Business or other for-profit; 3,038,792 responses; 53,183 hours
Lee Puricelli, (202) 720–7163

• Food and Nutrition Service
Nutrient Standard Menu Planning Demonstration Evalution
On occasion
State or local governments; Non-profit institution; 875 responses; 621 hours
John R. Endahl, (703) 305–2117

• Food Safety and Inspection Service
Records, Registration and Reports
FSIS Form 5020–1 and FSIS Form 7010–4
Recordkeeping; On occasion; Quarterly
Business or other for-profit; 24,095 responses; 15,752 hours
Lee Puricelli, (202) 720–7163

• Food Safety and Inspection Service
Official Marking Devices, Labeling and Packaging Materials
MP Form 216, FSIS Form 7234–1, FSIS Form 7227–1
Recordkeeping; On occasion
Businesses or other for-profit; 67,575 responses; 16,240 hours
Lee Puricelli, (202) 720–7163

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 94–2380 Filed 2–2–94; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Department of the Interior

National Park Service

Grand Canyon Railway, Inc., Passenger Railway Service Grand Canyon Airport to Grand Canyon Village; Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the Department of Agriculture, Forest Service, and the Department of the Interior, National Park Service, joint lead agencies, have prepared a final environmental impact statement (FEIS) and Record of Decision (ROD) on the provision of initiating passenger rail service form Grand Canyon Airport, Tusayan, Arizona, to the Maswick Transportation Area in Grand Canyon Village, Grand Canyon National Park.

The draft environmental impact statement (DEIS) was circulated for public review between July 31, 1992 and September 30, 1992 (57 FR 33168) and the comment period extended to November 14, 1992. Both the DEIS and FEIS describe and analyze a proposal and five alternatives. The proposal, Alternative A, provides for the construction of 5.4 miles of new railway line on the national forest, with 1.1 miles on an old rail line alignment, and use of existing rail line within the national park. One wash would need to be crossed within the airport property. Additional features are the construction of two depots, 75 acres of parking, a road for maintenance, and the addition of storage tanks for fuel, water and wastewater. A maximum of eight (8) trips per day would be generated between the airport and Maswick. Interpretive activities and visitor orientation to the park and national forest would be integrated into the service. Alternatives B, C and D, all provide for the proposed passenger

service but vary in the track alignment and length to be constructed, the amount of national forest lands needed and generally increase the number of washes that would be crossed. In addition, Alternative D provides for a single depot. Alternative E is a non-rail alternative, utilizing a shuttle bus system in conjunction with a parking area outside the park. Alternative F is the no action alternative. Alternative A, the proposal, is the environmentally preferred alternative.

The 30 day no action period on the FEIS and ROD will end March 7, 1994. The ROD, as it affects National Forest System Lands, is subject to appeal in accordance with 36 CFR part 217. A notice of appeal must be in writing and clearly state that it is a Notice of Appeal being filed pursuant to 36 CFR part 217. Appeals must be filed with the Regional Forester, Southwestern Region, 517 Gold Avenue SW., Albuquerque, NM 87102–0094 within 45 days of legal notice of this decision in the Arizona Daily Sun. While The National Park Service has no formal appeal process, no implementation of the proposal within Grand Canyon National Park will occur before expiration of the 30 day no action period and contingent on any appeals received pertaining to National Forest System lands.

Requests for additional information and/or copies of the FEIS and ROD should be directed to the Forest Supervisor, Kaibab National Forest, 800 South State Street, Williams, AZ 86048, telephone number 602–635–2681, or to the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon National Park, AZ 86023, telephone number 602–638–7701.

Copies of the FEIS and ROD are available for inspection at the park headquarters, Forest Supervisor's office, and libraries at Flagstaff, Williams, Northern Arizona University, and Arizona State University. Copies are also available at the following addresses: Western Regional Office, National Park Service, Attn: Division of Planning, Grants and Environmental Quality, 600 Harrison Street, suite 600, San Francisco, CA 94107–1372, and at the Regional Office, Southwestern Region, USDA Forest Service, 517 Gold Ave. SW., Albuquerque, NM 87102.

Dated: December 1, 1993.

Lew Albert,

Deputy Regional Director, Western Region.

Dated: January 18, 1994.

Larry Henson,

Regional Forester, Southwestern Region.

[FR Doc. 94–2360 Filed 2–2–94; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–94]

Proposed Foreign-Trade Zone; Richmond, VA (Richmond-Petersburg Port of Entry); Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital Region Airport Commission, requesting authority to establish a general-purpose foreign-trade zone in Richmond, within the Richmond-Petersburg Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 24, 1994. The applicant is authorized to make the proposal under Virginia Acts of Assembly 1980, Chapter 380, § 8.10.

The proposed foreign-trade zone would involve the Richmond International Airport complex (2,055 acres), some 5 miles east of the City of Richmond. The complex is owned by the Airport Commission, which plans to contract with a qualified firm for operation of the zone.

The application contains evidence of the need for zone services in the Richmond area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as automobile parts, laboratory equipment, musical instruments and pharmaceuticals. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on March 16, 1994, at 9 a.m., in the Auditorium of the Metropolitan Richmond Chamber of Commerce, 201 East Franklin Street, Richmond, Virginia.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 4, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 19, 1994).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

U.S. Department of Commerce District Office, 700 Centre, 704 East Franklin Street, suite 550; Richmond, Virginia 23219.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 26, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–2451 Filed 2–2–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to timely requests for an administrative review by the respondents, Branco Peres Citrus (Branco Peres), Citropectina, S.A., and Frutropic, S.A., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. The review covers three manufacturers/exporters of this merchandise to the United States and the period May 1, 1991 through April 30, 1992. We preliminarily determine the dumping margins for Branco Peres, Citropectina, and Frutropic to be zero or *de minimis* during this period.

The Department intends to revoke the antidumping duty order with respect to Frutropic because we have reason to believe that Frutropic has sold the subject merchandise at not less than foreign market value for a period of at least three consecutive years and is not likely to sell the subject merchandise at less than foreign market value in the future. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: David Mason or Rick Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1987, the Department published in the **Federal Register** an antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (52 FR 16426). On May 31, 1992, pursuant to the Department's notice of "Opportunity to Request Administrative Review" (57 FR 19412) of the antidumping duty order on FCOJ from Brazil for the period May 1, 1991 through April 30, 1992, Branco Peres, Citropectina, and Frutropic requested an administrative review for this period. Accordingly, the Department initiated this administrative review on June 18, 1992 (57 FR 27212).

In addition, Frutropic submitted a timely request for revocation of the antidumping duty order, accompanied by the certification required by § 353.25(b)(1) of the Department's regulations. The Department has now conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the administrative review are shipments of frozen concentrated orange juice (FCOJ) from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three manufacturers/exporters of the subject merchandise to the United States for the period May 1, 1991 through April 31, 1992: Branco Peres, Citropectina, and Frutropic.

United States Price

In calculating the United States price, we used both purchase price and exporter's sales price (ESP) as defined in section 772 of the Tariff Act. Purchase price was used for those sales to the United States which were made prior to importation, while ESP was used for those sales which were made after importation.

Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. For purchase price sales, where applicable, we made deductions for foreign inland freight, Brazilian port charges, export taxes, commissions, packing, and credit expenses. ESP was based on the packed delivered price to the first unrelated purchaser in the United States. For ESP sales, we made deductions for brokerage and handling expenses, foreign inland freight, ocean freight and marine insurance, U.S. duty, U.S. Customs' fees and harbor maintenance fees, U.S. inland freight and insurance, packing, commissions, discounts, rebates, credit expenses and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), the Department based FMV on third country f.o.b. prices for all respondents, in accordance with section 773 of the Act. We made deductions, where appropriate, for foreign inland freight, marine insurance, foreign and brokerage and handling, and export taxes. Where applicable, we deducted foreign packing expenses and added U.S. packing to third country price (packing costs were not incurred on bulk sales). We adjusted FMV, where applicable, for differences in credit expenses, and post-sale warehousing expenses. In the case of comparisons to ESP sales, we made an adjustment for indirect selling expenses, limited by the amount of indirect selling expenses incurred in the United States. No other adjustments were claimed or allowed.

In calculating FMV in the context of administrative reviews, it is the Department's practice to use a monthly weighted-average of third country or home market sales, as appropriate, for comparison to the U.S. sales price when several home market or third country sales may represent the behavior of the company for a given month during the period of review. (See "Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review," February 3, 1992, 57 FR 3995.) However, in this review, distortions could result from the application of a monthly FMV because of hyper-inflation. Where such distortions would have been created, we calculated FMVs, as we have done in previous reviews, based on shorter periods as determined by the Brazilian government-mandated minimum export price (which is derived from the FCOJ 30-day futures contract price on the New York Cotton Exchange). (See "Frozen Concentrated Orange Juice From Brazil; Preliminary Results and Termination In Part of Antidumping Duty Administrative Review; Intent to Revoke in Part the Antidumping Duty Order," June 19, 1991, 56 FR 28138.)

In the case of Branco Peres, the Department used constructed value, as defined in section 773 of the Act, for comparison to those U.S. sales where no contemporaneous third country sales existed.

Constructed value consisted of the sum of the costs of materials, fabrication, general selling and administrative expenses, freight and profit. Because the actual profit was more than the statutory minimum of eight percent of the sum of general expenses and cost of manufacture, we added the actual profit in accordance with section 773(e)(1)(B)(ii) of the Act.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the dumping margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Branco Peres	5/1/91 to 4/30/92	0.03.
Citropectina	5/1/91 to 4/30/92	Zero.
Frutropic	5/1/91 to 4/30/92	Zero.

The Department intends to revoke the antidumping duty order with respect to Frutropic if, at the time the Department publishes the final results of this review, Frutropic has demonstrated three consecutive years of sales at not less than foreign market value, and it is not likely that Frutropic will sell subject merchandise at less than foreign market value in the future. As required by § 353.25(c)(2)(ii) of the Department's regulations, the Department has conducted a verification of all factual information submitted by Frutropic in this administrative review.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this administrative review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company, in the event the order is not revoked in part, will be that established

in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is such a firm, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 1.96 percent *ad valorem*. On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 1.96 percent *ad valorem*, the "all others" rate established in the LTFV investigation by the Department, (52 FR 8324, March 17, 1987).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice in the **Federal Register**, and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after publication. The Department will publish a notice of final results of this administrative review, including an analysis of issues raised in any written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5)) of the Department's regulations.

Dated: January 26, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–2450 Filed 2–2–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–508–605]

Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 28, 1993, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on industrial phosphoric acid from Israel (58 FR 57986). We have now completed the review and determine the net subsidy to be 6.98 percent *ad valorem* for all firms during the period January 1, 1991 through December 31, 1991.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 57986) the preliminary results of its administrative review of the countervailing duty order on industrial phosphoric acid from Israel (52 FR 31057; August 19, 1987) covering the period January 1, 1991 through December 31, 1991. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Israeli industrial phosphoric acid. During the review period, such merchandise was classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991 and nine programs. Negev Phosphates, Ltd. (NPL), which merged with Rotem Fertilizers Ltd. on December 31, 1991 after operating independently throughout the review period, was the only known producer exporting the subject merchandise from Israel to the United States during the 1991 review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from the respondents, the Government of Israel (GOI) and NPL, and a written rebuttal comment from the petitioners, the Monsanto Company and FMC Corporation.

Comment: Respondents argue that the cash deposit rate should be reduced by the amount of benefit attributable to the Exchange Rate Risk Insurance Scheme (EIS) because the program was terminated prior to the publication of these final results. The GOI and NPL state that most EIS claims will be paid by the end of 1993 as indicated in the GOI response to the Department's questionnaire. The GOI and NPL also point to the reduction in benefits that exporters received from this program in this review period compared to those received in the prior administrative review. Thus, respondents claim that it is unreasonable to base the deposit rate for future entries on benefits received in 1991, given the program's declining

benefits and termination with limited residual benefits.

Petitioners point out that the exact timing of NPL's receipt of benefits under the EIS will depend on variables such as the time necessary for shipment of the goods and EIS processing of the claim. According to petitioners, these uncertainties preclude the determination of a fixed date for actual termination of benefits to be received by NPL. As a result, EIS benefits should continue to be reflected in the cash deposit rate.

Department's Position: We disagree with the respondents. The Department's regulations require the Department to instruct the Customs Service to collect a cash deposit of estimated countervailing duties on future entries. The Department normally uses as an estimate of countervailing duties on future entries the assessment rate found in the final results of review (see 19 CFR 355.22(c)(10)).

Although the EIS program was terminated, it is clear that some payments may continue to be received beyond the date of EIS termination by exporters who entered into EIS contracts before termination of the program. In situations in which a government terminates a program but residual benefits may continue to be bestowed under the terminated program, it is the Department's practice not to adjust the deposit rate. *See Cotton Yarn from Brazil; Preliminary Results of Administrative Review* (56 FR 47456, 47457; September 19, 1991) and *Cotton Yarn from Brazil; Final Results of Administrative Review* (57 FR 1454; January 14, 1992). In order to adjust the cash deposit rate as a result of a program-wide change, the Secretary must be able to measure the change in the level of countervailable subsidies provided under the program in question (*see* section 355.50(a)(2) and (d)(1) of *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366; May 31, 1989). Therefore, because residual benefits from the EIS program may continue to be provided after the date of our preliminary results and cannot be measured, we have not adjusted the cash deposit rate as a result of the termination of the EIS program.

Final Results of Review

After reviewing all of the comments received, we determine the net subsidy to be 6.98 percent *ad valorem* for all companies during the period January 1, 1991 through December 31, 1991.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 6.98 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1991 and on or before December 31, 1991.

Further, the Department will instruct the Customs Service to collect a cash deposit of 6.98 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This cash deposit shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 28, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-2449 Filed 2-2-94; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for a scientific research permit (P557A).

SUMMARY: Notice is hereby given that Scripps Institute of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093-0225, has applied in due form for a permit to take several species of marine mammals and sea turtles for purposes of scientific research.

DATES: Written comments must be received on or before March 7, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213 (310/980-4016).

Written data or views or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

This permit application is to incidentally harass marine mammals and sea turtles by a low frequency (60-80 Hz) sound source which will be located due west of Pt. Sur, California, at 850-950m depth. This sound source is part of the Acoustic Thermometry of Ocean Climate (ATOC) Program, and will be operated from approximately April 1, 1994, through March 31, 1996, with a maximum duty cycle of 8%, to conduct research on the effects of this source on marine mammals. The transmission bandwidth is approximately 20 Hz with a level of 195 dB (re: 1 uPa at 1m) and the spectrum level for the peak frequency (70 Hz) is 182 dB (re: 1 uPa at 1m). The effects of these transmissions on marine mammals and sea turtles will be monitored through passive acoustic tracking, satellite and recoverable tagging of "indicator" species, and visual surveys and observations.

Dated: January 27, 1994.

Herbert W Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-2409 Filed 2-2-94; 8:45 am]

BILLING CODE 3510-22-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are

intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–086R. *Applicant:* University of Massachusetts at Amherst, Polymer Science and Engineering, LGRT, Amherst, MA 01003. *Instrument:* Laser Light Scattering Goniometer System, Model ALV/DLS-5000. *Manufacturer:* ALV-Laser Vertriebsgesellschaft, m.b.H., Germany. *Original notice of this resubmitted application was published in the* **Federal Register** *of* August 12, 1993.

Docket Number: 93–154. *Applicant:* University of Wisconsin - Madison, Department of Chemistry, 1101 University Avenue, Madison, WI 53706. *Instrument:* Mass Spectrometer, Model VG AutoSpec–3000 with Accessories. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to analyze samples of complex organic, inorganic and organometallic compounds and biochemicals to determine the molecular weight, molecular formula and structure of compounds having a molecular weight up to 5,000 Daltons. *Application Received by Commissioner of Customs:* December 20, 1993.

Docket Number: 93–155. *Applicant:* The University of North Carolina at Chapel Hill, Curriculum in Marine Sciences, UNC-CH, CB-3300, 12-7 Venable Hall, Chapel Hill, NC 27599–3300. *Instrument:* Mass Spectrometer with Automated Gas and Gas Chromatograph/Combustion Inlet Systems, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for stable isotope ratio measurements on organic compounds, gases at trace concentration, water samples and minerals. The objectives of the investigation are to determine the mechanisms and rates of biogeochemical processes through combined use of stable isotopic measurements with other studies. In addition, the instrument will be used in the courses Marine Sciences 105 (Chemical Oceanography), and Marine Sciences 199 (Biogeochemistry), and Marine Sciences 145 (Geochemistry), providing necessary instruction and training for science majors. *Application Received by Commissioner of Customs:* December 20, 1993.

Docket Number: 93–156. *Applicant:* University of Arizona, Tree-Ring Laboratory, Building #58, 105 W. Stadium, Tucson, AZ 85721. *Instrument:* Automated Microvolume Inlet System. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* The instrument is an accessory to an existing mass spectrometer that is being used for stable-isotope ratio analysis of tree ring, soil and carbonate samples. Measurements will be used to develop relationships with environmental parameters (especially drought) which may be used to reconstruct paleo-environmental seasonal variation. The system represents an improvement in allowing small samples to be easily analyzed and permitting analysis in an automated mode. The instrument will also be used for educational purposes demonstrating the latest stable isotope ratio technology and research applications to graduate students in geosciences, hydrology, watershed management and ecology. *Application Received by Commissioner of Customs:* January 3, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–2452 Filed 2–2–94; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: State of Connecticut (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from June 1, 1994 to May 31, 1995 is estimated at $222,196. The total Federal Amount is $188,867 and is composed of $184,260 plus the Audit Fee Amount of $4,607. The application must include a minimum cost-share of 15% ($33,329) of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the State of Connecticut geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state, and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal Awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is March 7, 1994. Applications must be postmarked on or before March 7, 1994. The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room–3720, New York, New York 10278 (Area Code & Telephone Number): (212) 264–3262.

FOR FURTHER INFORMATION CONTACT:

William R. Fuller, Acting Regional Director, New York Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days, Executive order 12372, "Intergovernmental Review of Federal Programs," is no applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) as assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangement satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Some inaccurate or inflated claims may be deemed illegal and punishable by law.

Fales Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR Part 26, Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Dated: January 26, 1994.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

William R. Fuller,

Acting Regional Director, New York (Regional Office)

[FR Doc. 94–2328 Filed 2–2–94; 8:45 am]

BILLING CODE 510–21–M

National Oceanic and Atmospheric Administration

[Docket No. 940119–4019; I.D. 123093G]

Coral and Coral Reefs of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of control date for entry into the commercial fishery for live rock.

SUMMARY: This notice announces that anyone entering the commercial fishery for live rock in the exclusive economic zone (EEZ) off the coastal states of the South Atlantic and Gulf of Mexico after February 3, 1994 may not be assured of future access to the fishery if a management regime is developed and

implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) that limits the number of participants in the fishery. This notice is intended to discourage new entries into the fishery based on economic speculation while the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) consider fishery management options that range from limited access to a total prohibition of live rock harvest.

ADDRESSES: A copy of draft Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic may be obtained from the Gulf of Mexico and South Atlantic may be obtained from the Gulf of Mexico Fishery Management Council, Lincoln Center, suite 331, 5401 West Kennedy Boulevard, Tampa, Florida 33609–2468, or the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407–4699.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Councils are developing Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP) that would add "live rock" to the fishery management unit. Live rock means certain living marine organisms, or an assemblage thereof, attached to a hard substrate (including dead coral or rock). In addition to live corals, these organisms may include anemones, sponges, tube worms, mollusks, crustaceans, bryozoans, sea squirts, and marine algae. Management measures adopted could include harvest limitations, such as limited entry or a total prohibition of harvest to prevent fishery habitat loss, a provision for aquaculture of live rock, and permits for scientific and educational collections.

In 1989, the Florida Department of Natural Resources (FDNR) (now Department of Environmental Protection) determined that live rock harvest (i.e., the collection of rocks with marine organisms attached for use in home aquariums) was detrimental to the Florida Reef Tract and other hard bottom habitat areas. The Florida Marine Fisheries Commission (FMFC) noted that the only current net production of the carbonate substrate underlying live rock occurs on living rock reefs and, in Florida, these areas are either in equilibrium or eroding. FDNR personnel testified that more than 90 percent of the live rock examined at the request of enforcement agents contained visible colonies of prohibited corals, such as stony corals and sea fans. The FMFC concluded that live rock removal (1) can violate State and Federal laws that prohibit taking of corals, (2) reduces the surface area and topographic complexity of Florida's coral reefs and other live bottom areas, and (3) removes entire micro-communities along with targeted aquarium species. As a result of this rulemaking, live rock harvesting efforts shifted to the EEZ off Florida.

The FMFC has noted that in 1991 approximately 35 individuals reported combined landings of about 300 tons of live rock from EEZ waters adjacent to the Florida Reef Tract, Florida's east coast reefs, and the Gulf of Mexico hard bottom areas. In 1992, reported Florida landings from the EEZ totalled about 400 tons.

Although the Councils have discussed the live rock issue, particularly pertaining to EEZ waters over recent years, they took no regulatory action since the FMFC had decided to initiate rulemaking regarding live rock landings from the EEZ off Florida. Specifically, the Councils deferred action since Florida's planned phase-out of live rock landings appeared to address what seemed to be a Florida area management issue.

In June 1992 the Florida Governor and Cabinet approved the FMFC rule to phase-out live rock landings from the EEZ over a 3-year period ending on June 30, 1995. The phase-out period was designed to allow development of live rock aquaculture which would be exempt from the harvest ban. The phase-out was to be accomplished by a 25 percent annual reduction in allowable landings (based on the 1991 reported landings) accompanied by a 500 pound daily vessel limit.

On March 31, 1993, a U.S. District Court Judge issued a preliminary injunction to prevent enforcement of Florida's quota and vessel landing limits relating to possession or landing of live rock taken in the EEZ. Florida live rock fishermen argued that the Magnuson Act superseded state landing laws and the Councils had made "an affirmative and conscious decision" not to prohibit the taking of live rock in the EEZ.

Because of the District Court action, the Councils are now concerned that removal of live rock from the EEZ is currently unregulated. Also, there is growing interest in harvest of live rock from North Carolina to Alabama. In April 1993, the South Atlantic Fishery Management Council (SAFMC) approved a motion to include live rock in the FMP and reactivate the Coral Advisory Panel. In May 1993, the Gulf Council, on being advised of live rock landings in Alabama, and at the request of that State and Florida, initiated development of options for live rock management. In June 1993, the SAFMC held a public scoping meeting in Duck Key, Florida, to solicit input from the harvesters and the general public on the management of live rock. In November 1993, the Councils prepared draft Amendment 2 to the FMP to address the live rock issue, and established a schedule for future public hearings. See **ADDRESSES** to obtain a copy of this document.

In establishing a control date and making this announcement, the Councils intend to discourage speculative entry into the live rock fishery while they discuss possible management regimes. As the Councils consider a limited entry or access-controlled management regime, among other options, certain fishermen who do not currently harvest live rock, and never have done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial live rock landings. In the absence of a control date, such a record generally may be considered indicative of economic dependence on the fishery. In addition, when management authorities begin to consider use of a limited access management regime, speculative entry into a fishery often is responsible for a rapid increase in fishing effort that may exacerbate adverse environmental impacts.

Establishment of a control date does not commit the Councils or the Secretary of Commerce to any particular management regime or criterion for entry into the commercial fishery for live rock. Fishermen are not guaranteed future participation in the fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Councils may subsequently choose a different control date, or they may choose a management regime that does not make use of such a date.

Authority: 16 U.S.C. 1801 et seq.

Dated: January 28, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–2417 Filed 2–2–94; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for Public Display Permit, Aqua Circus of Cape Cod Limited Partnership (P23D).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Aqua Circus of Cape Cod Limited Partnership, dba ZooQuarium, 674 Route 28, West Yarmouth, MA 02673.
2. *Type of Permit:* Public Display.
3. *Number and Name of Animals:* Two California sea lions (*Zalophus californianus*) from captive stock.

The applicant requests authorization to obtain permanent custody of two California sea lions from captive stock for the purposes of public display at ZooQuarium.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review, by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

Dated: January 27, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–2408 Filed 2–2–94; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of the Extension of the Bilateral Textile Agreement and Visa and Exempt Certification Arrangement Between the United States and India

January 31, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the extension of the bilateral textile agreement and visa and exempt certification arrangement with India.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on January 5, 1994 (59 FR 574) announced an extension of the existing visa and exempt certification arrangement between the Governments of the United States and India through January 31, 1994. In a Memorandum of Understanding dated January 22, 1994 the two governments agreed to further amend and extend their Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987. The agreement and the visa and exempt certification arrangement have been extended through December 31, 1995. A directive to Customs implementing the limits for 1994 will be published shortly in a separate notice.

The purpose of this notice is to remind the public that the U.S. Customs Service must continue to require visas and exempt certifications, as previously published, for textiles and textile products, produced or manufactured in India and exported to the United States.

See 44 FR 68504, published on November 29, 1979.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–2462 Filed 2–2–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Palm Beach County, Florida, Beach Erosion Control Project

AGENCY: U.S. Army Corps of Engineers, Jacksonville District, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Supplemental Environmental Impact Statement for the Palm Beach County Shore Protection Project. The SEIS concerns the Ocean Ridge Segment of the project. The authorized project provides for the restoration and periodic nourishment of a section of beach starting at the south jetty of South Lake Worth Inlet and extending south 1.6 miles. The nourishment of the Ocean Ridge segment will provide protection to beachfront properties from wave damage and beach erosion.

ADDRESSES: U.S. Army Corps of Engineers, Jacksonville District, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Dupes, (904) 232–1689.

SUPPLEMENTARY INFORMATION: 1. The Beach Erosion Control Project for Palm Beach County, Florida, was authorized on 23 October 1962, by Public Law 87–874. A General Design Memorandum (GDM) and Final Environmental Impact Statement (FEIS) for Palm Beach County was published in April 1987. The FEIS addressed the alternative methods of accomplishing the project goals and the impacts associated with those alternatives. The project sponsor is the County of Palm Beach. A Supplemental Design Memorandum and SEIS are currently being prepared for the Ocean Ridge segment to discuss the specific location of the borrow area and because several alternative design modifications to the authorized project are being considered. Environmental considerations will include the potential presence of historic and archeological resources, aesthetics, endangered or threatened species, and adjacent marine habitats.

2. Scoping: The scoping process will involve Federal, State, county and municipal agencies, and other interested persons and organizations. A scoping letter (December 7, 1993) has been sent to interested Federal, State, county and municipal agencies requesting their comments and concerns. Any persons and organizations wishing to participate in the scoping process should contact the U.S. Army Corps of Engineers at the address given in this notice. Significant issues that are anticipated include concern for offshore hard bottom communities, fisheries, water quality, sea turtles and sea turtle nests. Consultation with the State Historic Preservation Officer (SHPO) during the development of the FEIS indicated that historical and archaeological resources may be present in the project area. Further coordination with the SHPO will occur during the preparation of the SEIS.

3. Coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be accomplished in compliance with section 7 of the Endangered Species Act. Coordination required by applicable Federal and State laws and policies will be conducted. Since the project will require the discharge of material into waters of the United States, the discharge will comply with the provisions of section 404 of the Clean Water Act as amended.

4. SEIS Preparation: It is estimated that a draft SEIS will be available to the public in June 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–2361 Filed 2–2–94; 8:45 am]

BILLING CODE 3710–IJ–M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 16–18 February 1994.

Time of Meeting: 0900–1200.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's 1994 Summer Study on "Technical Information Architecture (TIA)" will meet to discuss the Terms of Reference and selected briefings related to the study will be presented. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–2384 Filed 1–28–94; 4:41 pm]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 17 & 18 February 1994.

Time of Meeting: 0900–1700 (classified), 0900–1130 (classified).

Place: Fort Sill, Oklahoma.

Agenda: The Army Science Board's Ad Hoc Study on "Innovatives in Artillery Force Structure" will hold a meeting of the Panel Members. this meeting will be hosted by the commanding General and Director of Combat Developments, U.S. Army Field Artillery Center, Fort Sill, Oklahoma. The intent of the meeting is to present general and specific information to the panel pertaining to force structure development within the U.S. Army Field Artillery. It will consist of primarily classified briefings. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d).

The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–2368 Filed 1–28–94; 4:41 pm]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 22 February 1994.

Time of Meeting: 0900–1700.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's C3I Issue Group study team will meet to hear selected briefings related to the team study titled—"Leveraging Commercial Technologies in Army C3 Systems". This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–2370 Filed 2–2–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 22 February 1994

Time of Meeting: 0830–1530.

Place: Fort Leavenworth, Kansas.

Agenda: The Army Science Board's Battle Labs Advisory Panel will meet to discuss the Army Battle Commend System (ABCS) architecture, human/machine/software requirements, and related subjects. The meeting is classified due to anticipated level of detail involved with review of ABCS. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–2369 Filed 2–2–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide current Regulatory Guidance Letters (RGL's) to all interested parties. RGL's are used by the U.S. Army Corps of Engineers Headquarters as a means to transmit guidance on the permit program (33 CFR 320–330) to its division and district engineers (DE's). Each future RGL will be published in the Notice section of the Federal Register as a means to insure the widest dissemination of this information while reducing costs to the Federal Government. The Corps no longer maintains a mailing list to furnish copies of the RGL's to the public.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph Eppard, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1783.

SUPPLEMENTARY INFORMATION: RGL's were developed by the Corps as a system to organize and track written guidance issued to its field agencies. RGL's are normally issued as a result of evolving policy; judicial decisions and changes to the Corps regulations or another agency's regulations which affect the permit program. RGL's are used only to interpret or clarify existing regulatory program policy, but do provide mandatory guidance to Corps district offices. RGL's are sequentially numbered and expire on a specified date. After a RGL's expiration date has passed, it no longer constitutes mandatory guidance for Corps district and division offices. Nevertheless, many expired RGL's still provide useful, non-mandatory guidance which Corps field offices have the discretion to follow. On the other hand, some RGL's have been superseded by specific provisions of subsequently issued regulations or RGL's. In addition, other expired RGL's, in whole or in part, may not be consistent with current Corps policy. The Corps incorporates most of the guidance provided by RGL's whenever it revises its permit regulations.

There were three RGL's issued by the Corps during 1993, and all were published in the Notices section of the **Federal Register** upon issuance. We are hereby publishing all current RGL's, beginning with RGL 91–1 and ending with RGL 93–3. We will continue to publish each RGL in the Notice Section of the **Federal Register** upon issuance and in early 1995, we will again publish the complete list of all current RGL's.

Dated: January 19, 1994.

Approved:

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

Regulatory Guidance Letter (RGL 91–1)

RGL 91–1

Date: Dec 31, 1991, Expires: Dec 31, 1996

Subject: Extensions of Time For Individual Permit Authorizations

1. The purpose of this guidance is to provide clarification for district and division offices relating to extensions of time for Department of Army permits (See 33 CFR 325.6).

2. *General:* A permittee is informed of the time limit for completing an authorized activity by General Condition #1 of the standard permit form (ENG Form 1721). This condition states that a request for an extension of time should be submitted to the authorizing official at least one month prior to the expiration date. This request should be in writing and should explain the basis of the request. The DE may consider an oral request from the permittee provided it is followed up with a written request prior to the expiration date. A request for an extension of time will usually be granted unless the DE determines that the time extension would be contrary to the public interest. The one month submittal requirement is a workload management time limit designed to prevent permittees from filing last minute time extension requests. Obviously, the one month period is not sufficient to make a final decision on all time extension requests that are processed in accordance with 33 CFR 325.2. It should be noted that a permittee may choose to request a time extension sooner than this (e.g., six months prior to the expiration date). While there is no formal time limit of this nature, a request for an extension of time should generally not be considered by the DE more than one year prior to the expiration date. A permit will automatically expire if an extension is not requested and granted prior to the applicable expiration date (See 33 CFR 325.6(d)).

3. *Requests for Time Extensions Prior to Expiration:* For requests of time extensions received prior to the expiration date, the DE should consider the following procedures if a decision on the request cannot be completed prior to the permit expiration date:

(a) The DE may grant an interim time extension while a final decision is being made; or

(b) The DE may, when appropriate, suspend the permit at the same time that an interim time extension is granted, while a final decision is being made.

4. *Requests for Time Extensions After Expiration:* At time extension cannot be granted if a time extension request is received after the applicable time limit. In such cases, a new permit application must be processed, if the permittee wishes to pursue the work. However, the DE may consider expedited processing procedures when: (1) The request is received shortly (generally 30 days) after the expiration date, (2) the DE determines that there have been no substantial changes in the attendant circumstances since the original authorization was issued, and (3) the De believes that the time extension would likely have been granted. Expedited processing procedures may include, but are not limited to, not requiring that a new application form be submitted or issuing a 15 day public notice.

5. This guidance expires 31 December 1996 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore,

Chief, Operations, Construction and Readiness Division Directorate of Civil Works.

Regulatory Guidance Letter (RGL 92–1)

RGL 92–1

Date: 13 May 1992, Expires: 31 December 1997

Subject: Federal Agencies Roles and Responsibilities

1. *Purpose:* The purpose of this guidance is to clarify the Army Corps of Engineers leadership and decision-making role as "project manager" for the evaluation of permit applications pursuant to section 404 of the Clean Water Act (CWA) and section 10 of the Rivers and Harbors Act. This guidance is also intended to encourage effective and efficient coordination among prospective permittees, the Corps, and the Federal resource agencies (i.e., Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS)). Implementation of this guidance will help to streamline the permit process by minimizing delays and ensuring more timely decisions, while providing a meaningful opportunity for substantive input from all Federal agencies.

2. *Background:*

(a) The Department of the Army Regulatory Program must operate in an efficient manner in order to protect the aquatic environment and provide fair, equitable, and timely decisions to the regulated public. Clear leadership and a predictable decision-making framework will enhance the public acceptance of the program and allow the program to meet the important objective of effectively protecting the Nation's valuable aquatic resources.

(b) On August 9, 1991, the President announced a comprehensive plan for improving the protection of the Nation's wetlands. The plan seeks to balance two important objectives—the protection, restoration, and creation of wetlands and the need for sustained economic growth and development. The plan, which is designed to slow and eventually stop the net loss of wetlands, includes measures that will improve and streamline the current wetlands regulatory system. This Regulatory Guidance Letter is issued in accordance with the President's plan for protecting wetlands.

(c) The intent of this guidance is to express clearly that the Corps is the decision-maker and project manager for the Department of Army's Regulatory

Program. The Corps will consider, to the maximum extent possible, all timely, project-related comments from other Federal agencies when making regulatory decisions. Furthermore, the Corps and relevant Federal agencies will maintain and improve as necessary their working relationships.

(d) The Federal resource agencies have reviewed and concurred with this guidance and have agreed to act in accordance with these provisions. While this guidance does not restrict or impair the exercise of legal authorities vested in the Federal resource agencies or States under the CWA or other statutes and regulations (e.g., EPA's authority under section 404(c), section 404(f), and CWA geographic jurisdiction and FWS/NMFS authorities under the Fish and Wildlife Coordination Act and the Endangered Species Act (ESA)), agency comments on Department of the Army permit applications must be consistent with the provisions contained in this regulatory guidance letter.

3. *The Corps Project Management/Decision Making Role:*

(a) The Corps is solely responsible for making final permit decisions pursuant to section 10 and section 404(a), including final determinations of compliance with the Corps permit regulations, the section 404(b)(1) Guidelines, and section 7(a)(2) of the ESA. As such, the Corps will act as the project manager for the evaluation of all permit applications. The Corps will advise potential applicants of its role as the project manager and decision-maker. This guidance does not restrict EPA's authority to make determinations of compliance with the Guidelines in carrying out its responsibilities under sections 309 and 404(c) of the Clean Water Act.

(b) As the project manager, the Corps is responsible for requesting and evaluating information concerning all permit applications. The Corps will obtain and utilize this information in a manner that moves, as rapidly as practical, the regulatory process towards a final permit decision. The Corps will not evaluate applications as a project opponent or advocate—but instead will maintain an objective evaluation, fully considering all relevant factors.

(c) The Corps will fully consider other Federal agencies' project-related comments when determining compliance with the National Environmental Policy Act (NEPA), the section 404(b)(1) Guidelines, the ESA, the National Historic Preservation Act, and other relevant statutes, regulations, and policies. The Corps will also fully consider the agencies' views when determining whether to issue the permit, to issue the permit with conditions and/or mitigation, or to deny the permit.

4. *The Federal Resource Agencies' Role:*

. (a) It is recognized that the Federal resource agencies have an important role in the Department of the Army Regulatory Program under the CWA, NEPA, ESA, Magnuson Fisheries Conservation and Management Act, and other relevant statutes.

(b) When providing comments, Federal resource agencies will submit to the Corps only substantive, project-related information on the impacts of activities being evaluated by the Corps and appropriate and practicable measures to mitigate adverse impacts. The comments will be submitted within the time frames established in interagency agreements and regulations. Federal resource agencies will limit their comments to their respective areas of expertise and authority to avoid duplication with the Corps and other agencies and to provide the Corps with a sound basis for making permit decisions. The Federal resource agencies should not submit comments that attempt to interpret the Corps regulations or for the purposes of section 404(a) make determinations concerning compliance with the section 404(b)(1) Guidelines. Pursuant to its authority under section 404(b)(1) of the CWA, the EPA may provide comments to the Corps identifying its views regarding compliance with the Guidelines. While the Corps will fully consider and utilize agency comments, the final decision regarding the permit application, including a determination of compliance with the Guidelines, rests solely with the Corps.

5. *Pre-application Consultation:*

(a) To provide potential applicants with the maximum degree of relevant information at an early phase of project planning, the Corps will increase its efforts to encourage pre-application consultations in accordance with regulations at 33 CFR 325.1(b). Furthermore, while encouraging pre-application consultation, the Corps will emphasize the need for early consultation concerning mitigation requirements, if impacts to aquatic resources may occur. The Corps is responsible for initiating, coordinating, and conducting pre-application consultations and other discussions and meetings with applicants regarding Department of the Army permits. This may not apply in instances where the consultation is associated with the review of a separate permit or license required from another Federal agency (e.g., the Federal Energy Regulatory Commission or the Nuclear Regulatory Commission) or in situations where resource agencies perform work for others outside the context of a specific Department of the Army permit application (e.g., the conservation Reserve Program and technical assistance to applicants of Federal grants).

(b) For those pre-application consultations involving activities that may result in impacts to aquatic resources, the Corps will provide EPA, FWS, NMFS (as appropriate), and other appropriate Federal and State agencies, a reasonable opportunity to participate in the pre-application process. The invited agencies will participate to the maximum extent possible in the pre-application consultation, since this is generally the best time to consider alternatives for avoiding or reducing adverse impacts. To the extent practical, the Corps and the Federal resource agencies will develop local procedures (e.g., teleconferencing) to promote reasonable and effective pre-application consultations within the logistical constraints of all affected parties.

6. *Applications for Individual Permits:*

(a) The Corps is responsible for determining the need for, and the coordination of, interagency meetings, requests for information, and other interactions between permit applicants and the Federal Government. In this regard, Federal resource agencies will contact the Corps to discuss and coordinate any additional need for information for the applicant. The Corps will cooperate with the Federal resource agencies to ensure, to the extent practical, that information necessary for the agencies to carry out their responsibilities is obtained. If it is determined by the Corps that an applicant meeting is necessary for the exchange of information with a Federal resource agency and the Corps chooses not to participate in such a meeting, the Federal resource agency will apprise the Corps, generally in writing, of that agency's discussions with the applicant. Notwithstanding such meetings, the Corps is solely responsible for permit requirements, including mitigation and other conditions—the Federal resource agencies must not represent their views as regulatory requirements. In circumstances where the Corps meets with the applicant and develops information that will affect the permit decision, the Corps will apprise the Federal resource agencies of such information.

(b) Consistent with 33 CFR part 325, the Corps will ensure that public notices contain sufficient information to

facilitate the timely submittal of project-specific comments from the Federal resource agencies. The resource agencies comments will provide specific information and/or data related to the proposed project site. The Corps will fully consider comments regarding the site from a watershed or landscape scale, including an evaluation of potential cumulative and secondary impacts.

(c) The Corps must consider cumulative impacts in reaching permit decisions. In addition to the Corps own expertise and experience, the Corps will fully consider comments from the Federal resource agencies, which can provide valuable information on cumulative impacts. Interested Federal agencies are encouraged to provide periodically to the Corps generic comments and assessments of impacts (outside the context of a specific permit application) on issues within the agencies' area of expertise.

7. *General Permits:*

(a) The Corps is responsible for proposing potential general permits, assessing impacts of and comments on proposed general permits, and deciding whether to issue general permits. The Corps will consider proposals for general permits from other sources, including the Federal resource agencies, although the final decision regarding the need to propose a general permit rests with the Corps. Other interested Federal agencies should provide comments to the Corps on proposed general permits. These Federal agency comments will be submitted consistent with established agreements and regulations and will focus on the Federal agencies' area(s) of expertise. The Corps will fully consider such agencies' comments in deciding whether to issue general permits, including programmatic general permits.

(b) The Corps is responsible for initiating and conducting meetings that may be necessary in developing and evaluating potential general permits. Any discussions with a State or local Government regarding proposed programmatic general permits will be coordinated through and conducted by the Corps. Prior to issuing a programmatic general permit, the Corps will ensure that the State or local program, by itself or with appropriate conditions, will protect the aquatic environment, including wetlands, to the level required by the section 404 program.

8. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Commander.
Arthur R. Williams,
Major General, USA, Director of Civil Works.

Regulatory Guidance Letter (92–2)

RGL 92–2
Date: 26 June 92, Expires: 31 December 95
CECW–OR
Subject: Water Dependency and Cranberry Production

1. Enclosed for implementation is a joint Army Corps of Engineers/ Environmental Protection Agency Memorandum to the Field on water dependency with cranberry production. This guidance was developed jointly by the Army Corps of Engineers and the U.S. Environmental Protection Agency.

2. This guidance will expire 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works.
John P. Elmore.
Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum to the Field

Subject: Water Dependency and Cranberry Production

1. The purpose of this memorandum is to clarify the applicability of the section 404(b)(1) Guidelines water dependency provisions (40 CFR 230.10(a)) to the cultivation of cranberries, in light of Army Corps of Engineers (Corps) regulations at 33 CFR 323.4(a)(1)(iii)(C)(1) (ii) and (iii), and Environmental Protection Agency (EPA) regulations at 40 CFR 232.3(d)(3)(i) (B) and (C). These sections of the Corps and EPA regulations state, among other things, that cranberries are a wetland crop, and that some discharges associated with cranberry production are considered exempt from regulation under the provisions of section 404(f) of the Clean Water Act. The characterization of cranberries as a wetland crop has led to inconsistency in determining if cranberry production is a water dependent activity as defined in the section 404(b)(1) Guidelines (Guidelines).

2. The intent of Corps regulations at 33 CFR 320.4(b) and of the Guidelines is to avoid the unnecessary destruction or alteration of waters of the U.S., including wetlands, and to compensate for the unavoidable loss of such waters. The Guidelines specifically required that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (see 40 CFR 230.10(a)). Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whther the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, therefore, in circumstances where an environmentally preferable practicable alternative for the proposed discharge exists (except as provided for under section 404(b)(2)).

3. For proposed discharges into wetlands and other "special acquatic sites," the Guidelines alternatives analysis requirement further considers whether the activity associated with the proposed discharge is "water dependent". The Guidelines define water dependency in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose. Special aquatic sites (as defined in 40 CFR 230.40–230.45) are: (1) Sanctuaries and refuges; (2) wetlands; (3) mud flats; (4) vegetated shallows; (5) coral reefs; and (6) riffle and pool complexes. If an activity is determined not to be water dependent, the Guidelines establish the follow two presumptions (40 CFR 230.10(a)(3)) that the applicant is required to rebut before satisfying the alternatives analysis requirements:

a. That practicable alternatives that do not involve special aquatic sites are presumed to be available; and,

b. That all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem.

It is the responsibility of the applicant to clearly rebut these presumptions in order to demonstrate compliance with the Guidelines alternatives test.

4. If an activity is determined to be water dependent, the rebuttable presumptions stated in paragraph 3 of this memorandum do not apply. However, the proposed discharge, whether or not it is associated with a water dependent activity, must represent the least environmentally damaging practicable alternative in order to comply with the alternatives analysis requirement of the Guidelines as described in paragraph 2 of this memorandum.

5. As previously indicated, Corps and EPA regulations consider cranberries as a wetland crop species. This characterization of cranberries as a

wetland crop species is based primarily on the listing of cranberries as an obligate hydrophyte in the National List of Plant Species That Occur in Wetlands (U.S. Fish and Wildlife Service Biological Report 88 (26.1–26.13)) and the fact that cranberries must be grown in wetlands or areas altered to create a wetland environment. Therefore, the Corps and EPA consider the construction of cranberry beds, including associated dikes and water control structures associated with dikes (i.e., headgates, weirs, drop inlet structures), to be a water dependent activity. Consequently, discharges directly associated with cranberry bed construction are not subject to the presumptions applicable to non-water dependent activities discussed in paragraph 3 of this memorandum. However, consistent with the requirements of § 230.10(a), the proposed discharge must represent the least environmentally damaging practicable alternative, after considering aquatic and non-aquatic alternatives as appropriate. To be considered practicable, an alternative must be available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. For commercial cranberry cultivation, practicable alternatives may include upland sites with proper characteristics for creating the necessary conditions to grow cranberries. Factors that must be considered in making a determination of whether or not upland alternatives are practicable include soil pH, topography, soil permeability, depth to bedrock, depth to seasonal high water table, adjacent land uses, water supply, and, for expansion of existing cranberry operations, proximity to existing cranberry farms. EPA Regions and Corps Districts are encouraged to work together with local cranberry growers to refine these factors to reflect their regional conditions.

6. In contrast, the following activities often associated with the cultivation and harvesting of cranberries are not considered water dependent: construction of roads, ditches, reservoirs, and pump houses that are used during the cultivation of cranberries, and construction of secondary support facilities for shipping, storage, packaging, parking, etc. Therefore, the rebuttable practicable alternatives presumptions discussed in paragraph 3 of this memorandum apply to the discharges associated with these non-water dependent activities. However, since determinations of practicability under the Guidelines includes consideration of cost, technical, and logistics factors, determining the availability of practicable alternatives to discharges associated with these non-water dependent activities must involve consideration of the need of an alternative to be proximate to the cranberry bed in order to achieve the basic project purpose of cranberry cultivation. Once it has been determined that the location of the cranberry bed, including associated dikes, and water control structures, represents the least environmentally damaging practicable alternative, practicable alternatives for maintenance roads, ditches, reservoirs and pump houses will generally be limited to the bed itself and the area in the vicinity of the actual bed. For example, the bed dikes may be the only practicable alternative for location of maintenance roads. When practicable alternatives cannot be identified within such geographic constraints, the applicant must minimize the impacts of the roads, reservoirs, etc., to the maximum extent practicable.

7. During review of applications for discharges associated with cranberry cultivation, it is important to reiterate that proposed discharges must also comply with the other requirements of the Guidelines (i.e., 40 CFR 230.10 (b) (c) and (d)). In addition, evaluations of all discharges, whether or not the proposed discharge is associated with a water dependent activity, must comply with the provisions of the National Environmental Policy Act, including an investigation of alternatives to the proposed discharge. Further, applications for discharges associated with cranberry cultivation will continue to be evaluated in accordance with current Corps and EPA policy and practice concerning mitigation, cumulative impact analysis, and public interest review factors.

8. This guidance expires 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (92–3)

RGL 92–3

Date: 19 Aug 92, Expires: 31 Dec 97

Subject: Extension of Regulatory Guidance Letter (RGL) 86–10 RGL 86–10, subject: "Special Area Management Plans (SAMP's)" is extended until 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

RGL 86–10

Special Area Management Plans (SAMP's)

Issued 10/2/86, Expired 12/31/88

1. The 1980 Amendments to the Coastal Zone Management Act define the SAMP process as "a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone." This process of collaborative interagency planning within a geographic area of special sensitivity is just as applicable in non-coastal areas.

2. A good SAMP reduces the problems associated with the traditional case-by-case review. Developmental interests can plan with predictability and environmental interests are assured that individual and cumulative impacts are analyzed in the context of broad ecosystem needs.

3. Because SAMP's are very labor intensive, the following ingredients should usually exist before a district engineer becomes involved in a SAMP:

1. The area should be environmentally sensitive and under strong developmental pressure.

b. There should be a sponsoring local agency to ensure that the plan fully reflects local needs and interests.

c. Ideally there should be full public involvement in the planning and development process.

d. All parties must express a willingness at the outset to conclude the SAMP process with a definitive regulatory product (see next paragraph).

4. An ideal SAMP would conclude with two products: (1) Appropriate local/State approvals and a Corps general permit (GP) or abbreviated processing procedure (APP) for activities in specifically defined situations; and (2) a local/State restriction and/or an Environmental Protection Agency (EPA) 404(c) restriction (preferably both) for undesirable activities. An individual permit review may be conducted for activities that do not fall into either category above. However, it should represent a small number of the total cases addressed by the SAMP. We

recognize that an ideal SAMP is difficult to achieve, and, therefore, it is intended to represent an upper limit rather than an absolute requirement.

5. Do not assume that an environmental impact statement is automatically required to develop a SAMP.

6. EPA's program for advance identification of disposal areas found at 40 CFR 230.80 can be integrated into a SAMP process.

7. In accordance with this guidance, district engineers are encouraged to participate in development of SAMP's. However, since development of a SAMP can require a considerable investment of time, resources, and money, the SAMP process should be entered only if it is likely to result in a definitive regulatory product as defined in paragraph 4. above.

8. This guidance expires 31 December 1988 unless sooner revised or rescinded.

For the Chief of Engineers.

Peter J. Offringa,

Brigadier General, USA, Deputy Director of Civil Works.

Regulatory Guidance Letter (RGL–92–4)

RGL–92–4

Date: 14 Sep 1992, Expires: 21 January 1997

Subject: Section 401 Water Quality Certification and Coastal Zone Management Act Conditions for Nationwide Permits

1. The purpose of this Regulatory Guidance Letter (RGL) is to provide additional guidance and clarification for divisions and districts involved in developing acceptable conditions under the section 401 Water Quality Certifications and Coastal Zone Management Act (CZM) concurrences for the Nationwide Permit (NWP) Program. This RGL represents a clarification if 330.4(c) (2) and (3) and 330.4(d) (2) and (3), concerning when NWP Section 401 and CZM conditions should not be accepted and thus treated as a denial without prejudice. The principles contained in this RGL also apply to 401 certification and CZM concurrence conditions associated with individual permits and regional general permits.

2. Corps divisions and districts should work closely and cooperatively with the States to develop reasonable 401 and CZM conditions. All involved parties should participate in achieving the purpose of the NWP program, which is to provide the public with an expeditious permitting process while, at the same time, safeguarding the environment by only authorizing activities which result in no more than minimal individual and cumulative adverse effects. When a State certifying agency or CZM agency proposes conditions, the division engineer is responsible for determining whether 401 Water Quality Certification or CZM concurrence conditions are acceptable and comply with the provisions of 33 CFR 325.4. In most cases it is expected that the conditions will be acceptable and the division engineer shall recognize these conditions as regional conditions of the NWP's.

3. *Unacceptable Conditions:* There will be cases when certain conditions will clearly be unacceptable and those conditioned 401 certifications or CZM concurrences shall be considered administratively denied. Consequently, authorization for an activity which meets the terms and conditions of such NWP(s) is denied without prejudice.

a. Illegal conditions are clearly unacceptable. Illegal conditions would result in violation of a law or regulation, or would require an illegal action. For example, a condition which would require an applicant to obtain a 401 certification or CZM concurrence, where the State as previously denied certification or concurrence, prior to submitting a predischarge notification (PDN) to the Corps in accordance with PDN procedures, would violate the Corps regulation at 33 CFR 330.4(c)(6). Another example would be a case where an applicant would be required, through a condition, to apply for an individual Department of the Army permit. Another example is a requirement by the State agency to utilize the 1989 Federal Wetland Delineation Manual to establish jurisdiction.

b. As a general rule, a condition that would require the Corps or another Federal agency to take an action which we would not otherwise take and do not choose to take, would be clearly unacceptable. For example, where the certification or concurrence is conditioned to require a PDN, where the proposed activity did not previously require a PDN, the Corps should not accept that condition, since implicitly the Corps would have to accept and utilize the PDN. Another example would be a situation where the U.S. Fish and Wildlife Service is required, through a condition, to provide any type of formal review or approval.

c. Section 401 or CZM conditions which provide for limits (quantities, dimensions, etc.) different from those imposed by the NWP do not change the NWP limits.

1. Higher limits are clearly not acceptable. For example, increasing NWP 18 for minor discharges from 10 to 50 cubic yards would not be acceptable. Such conditions would confuse the regulated public and could contribute to violations.

2. Lower limits are acceptable but have the effect of denial without prejudice of those activities that are higher than the Section 401 or CZM condition limit but within the NWP limit. Thus, if an applicant obtains an individual 401 water quality certification and/or CZM concurrence for work within the limits of an NWP where the State had denied certification and/or CZM concurrence, then the activity could be authorized by the NWP.

d. A condition which would delete, modify, or reduce NWP conditions would be clearly unacceptable.

4. Discretionary Enforcement: The initiation of enforcement actions by the Corps, whether directed at unauthorized activities or to ensure compliance with permit conditions, is discretionary. The district engineer will consider the following situations when determining whether to enforce 401 and/or CZM conditions.

a. Unenforceable Conditions—Some conditions that a State may propose will not be reasonably enforceable by the Corps (e.g., a condition requiring compliance with the specific terms of another State permit). Provided such conditions do not violate paragraph 3 above, the conditions will be accepted by the Corps as regional conditions. However, limited Corps resources should not be utilized in an attempt to enforce compliance with 401 or CZM conditions which the district engineer believes to be essentially unenforceable, or of low enforcement priority for limited Corps resources.

b. Enforceable Conditions—Some other conditions proposed by a State may be considered enforceable, (e.g., a condition requiring the applicant to obtain another State permit), but of low priority for Federal enforcement, since the Federal Government would not have required those conditions but for the State's requirement. Furthermore, the Corps will generally not enforce such State-imposed conditions except in very unusual cases, due to our limited personnel and financial resources.

5. *NWP Verification and PDN Responses:* In response to NWP verification requests and PDN's, district engineers should utilize the sample paragraphs presented below. This language should be used where conditional 401 certification or CZM concurrence has been issued. This specifically addresses situations when the conditions included with the certification or concurrence are such that the district engineer determines

they are unforceable or the district engineer cannot clearly determine compliance with the 401/CZM conditions (see 4.a.).

"Based on our review of your proposal to [describe proposal], we have determined that the activity qualifies for the nationwide permit authorizations [insert NWP No(s.)], subject to the terms and conditions of the permit.

[Insert paragraph on any Corps required activity-specific conditions].

Enclosed you will find a copy of the Section 401 Water Quality Certification and/or Coastal Zone Management special conditions, which are conditions of your authorization under Nationwide Permit [insert NWP No(s.)]. If you have questions concerning compliance with the conditions of the 401 certification or Coastal Zone Management concurrence, you should contact the [insert appropriate State agency].

If you do not or cannot comply with these State Section 401 certification conditions and/or CZM conditions, then in order to be authorized by this Nationwide Permit, you must furnish this office with an individual 401 certification or Coastal Zone Management concurrence from [insert appropriate State agency], or a copy of the application to the State for such certification or concurrence, [insert "60 days" for Section 401 water quality certification, unless another reasonable period of time has been determined pursuant to 33 CFR 330.4(c)(6), or insert "six months" for CZM concurrence] after you submit it to the State agency."

6. This guidance expires 21 January 1997 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 92–5)

RGL 92–5

Date: 29 October 1992, Expires: 31 December 1997

Subject: Alternatives Analysis Under the section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act.

1. Enclosed for implementation is a joint Army Corps of Engineers/ Environmental Protection Agency Memorandum to the Field on alternatives analysis for existing power plants that must be modified to meet requirements of the 1990 Clean Air Act. This guidance was developed jointly by the Corps and EPA.

2. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

EPA/Corps Joint Memorandum for the Field

Subject: Alternatives Analysis under the section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act.

1. The 1990 Clean Air Act (CAA) amendments require most electric generating plants to reduce emissions of sulfur dioxide in phases beginning in 1995 and requiring full compliance by 2010. The congressional endorsement of the industry's ability to select the most effective compliance method (e.g., sulfur dioxide scrubbers, low sulfur coal, or other methods) recognizes the expertise of the industry in these cases and is a fundamental element in the CAA market-based pollution control program. Given the need for cooling water, a substantial number of electric power generating plants are located adjacent, or in close proximity, to waters of the United States, including wetlands. Depending on the method chosen by the plants to reduce emissions, we expect that these facilities will be applying for Clean Water Act section 404 permits for certain proposed activities.

2. The analysis and regulation under section 404 of the Clean Water Act of activities in waters of the United States conducted by specific power plants to comply with the 1990 Clean Air Act amendments must ensure protection of the aquatic environment consistent with the requirements of the Clean Water Act. The review of applications for such projects will fully consider, consistent with requirements under the section 404(b)(1) Guidelines, all practicable alternatives including non-aquatic alternatives, for proposed discharges associated with the method selected by the utility to comply with the 1990 Clean Air Act amendments. For the purposes of the section 404(b)(1) Guidelines analysis, the project purpose will be that pollutant reduction method selected by the permit applicant.

3. For example, a utility may have decided to install sulfur dioxide scrubbers on an existing power plant in order to meet the new 1990 Clean Air Act standards. The proposed construction of the scrubbers, treatment ponds and a barge unloading facility could impact wetlands. In this case, the section 404 review would evaluate practicable alternative locations and configurations for the scrubbers, ponds and of the docking facilities. The analysis will also consider practicable alternatives which satisfy the project purpose (i.e., installing scrubbers) but which have a less adverse impact on the aquatic environment or do not involve discharges into waters of the United States. However, in order to best effectuate Congressional intent reflected in the CAA that electric utilities retain flexibility to reduce sulfur dioxide emissions in the most cost effective manner, the section 404 review should not evaluate alternative methods of complying with the Clean Air Act standards not selected by the applicant (e.g., in this example use of low sulfur coal).

4. In evaluating the scope of practicable alternatives which satisfy the project purpose (e.g., constructing additional scrubber capacity), the alternatives analysis should not be influenced by the possibility that, based on a conclusion that practicable upland alternatives are available to the applicant, the project proponent may decide to pursue other options for meeting Clean Air Act requirements. Continuing the above example, a Corps determination that practicable upland alternatives are available for scrubber waste disposal should not be affected by the possibility that an applicant may subsequently decide to select a different method for meeting the Clean Air Act standards (e.g., use of low sulfur coal that reduces waste generated by scrubbers).

5. The Corps and EPA will also recognize the tight time-frames under which the industry must meet these new air quality standards.

Robert H. Wayland,

Director, Office of Wetlands, Oceans and Watersheds.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 93–1)

RGL 93–1

Issued: April 20, 1993, Expires: December 31, 1998

CECW–OR

Subject: Provisional Permits

1. *Purpose:* The purpose of this guidance is to establish a process that clarifies for applicants when the U.S. Army Corps of Engineers has completed its evaluation and at what point the applicant should contact the State concerning the status of the Section 401 Water Quality Certification and/or Coastal Zone Management (CZM) consistency concurrence. This process also allows for more accurate measurement of the total length of time

spent by the Corps in evaluating permit applications (i.e., from receipt of a complete application until the Corps reaches a permit decision). For verification of authorization of activities under regional general permits, the Corps will use the appropriate nationwide permit procedures at 33 CFR 330.6.

2. *Background:* a. A Department of the Army permit involving a discharge of dredged or fill material cannot be issued until a State Section 401 Water Quality Certification has been issued or waived. Also, a Department of the Army permit cannot be issued for a activity within a State with a federally-approved Coastal Management Program when that activity that would occur within, or outside, a State's coastal zone will affect land or water uses or natural resources of the State's coastal zone, until the State concurs with the applicant's consistency determination, or concurrence is presumed. In many cases, the Corps completes its review before the State Section 401 Water Quality Certification or CZM concurrence requirements have been satisfied. In such cases, applicants and the public are often confused regarding who to deal with regarding resolution of any State issues.

b. The "provisional permit" procedures described below will facilitate a formal communication between the Corps and the applicant to clearly indicate that the applicant should be in contact with the appropriate State agencies to satisfy the State 401 Water Quality Certification or CZM concurrence requirements. In addition, the procedures will allow for a more accurate measurement of the Corps permit evaluation time.

3. *Provisional Permit Procedures:* The provisional permit procedures are optional and may only be used in those cases where: (i) The District Engineer (DE) has made a provisional individual permit decision that an individual permit should be issued, and (ii) the only action(s) preventing the issuance of that permit is that the State has not issued a required Section 401 Water Quality Certification (or waiver has not occurred) or the State has not concurred in the applicant's CZM consistency determination (or there is not a presumed concurrence). In such cases, the DE may, using these optional procedures, send a provisional permit to the applicant.

a. First, the DE will prepare and sign the provisional permit decision document. Then the provisional permit will be sent to the applicant by transmittal letter. (The sample transmittal letter at enclosure 1 contains the minimum information that must be provided.)

b. Next, the applicant would obtain the Section 401 Water Quality Certification (or waiver) and/or CZM consistency concurrence (or presumed concurrence). Then the applicant would sign the provisional permit and return it to the DE along with the appropriate fee and the Section 401 Water Quality Certification (or proof of wavier) and/or the CZM consistency concurrence (or proof of presumed concurrence).

c. Finally, the Corps would attach any Section 401 Water Quality Certification and/or CZM consistency concurrence to the provisional permit, then sign the provisional permit (which then becomes the issued final permit), and forward the permit to the applicant.

d. This is the same basic process as the normal standard permit transmittal process except that the applicant is sent an unsigned permit (i.e., a provisional permit) prior to obtaining the Section 401 Water Quality Certification (or waiver) and/or CZM consistency concurrence (or presumed concurrence). (See enclosure 2.) A permit cannot be issued (i.e., signed by the Corps) until the Section 401 and CZM requirements are satisfied.

4. *Provisional Permit:* A provisional permit is a standard permit document with a cover sheet. The cover sheet must clearly indicate the following: that a provisional permit is enclosed, that the applicant must obtain the section 401 Water Quality Certification or CZM concurrence from the State, that these documents must be sent to the Corps along with the provisional permit signed by the applicant, and that the Corps will issue the permit upon receipt of these materials. The issued permit is the provisional permit signed by the applicant and the Corps. The provisional permit must contain a statement indicating that the applicant is required to comply with the Section 401 Water Quality Certification, including any conditions, and/or the CZM consistency concurrence, including any conditions. At enclosure 3 is a sample cover sheet for the provisional permit.

5. *Provisional Permit Decision:* The DE may reach a final decision that a permit should be issued provided that the State issues a Section 401 Water Quality Certification and/or a CZM concurrence. In order to reach such a decision the DE must complete the normal standard permit evaluation process, prepare and sign a decision document, and prepare a standard permit, including any conditions or mitigation (i.e., a provisional permit). The decision document must include a statement that the DE has determined that the permit will be issued if the State issues a Section 401 Water Quality Certification or waiver and/or a CZM concurrence, or presumed concurrence. The standard permit will not contain a condition that requires or provides for the applicant to obtain a Section 401 Water Quality Certification and/or CZM concurrence. Once the decision document is signed, the applicant has the right to a DA permit if the State issues a Section 401 Water Quality Certification or waiver and/or a CZM concurrence, or if concurrence is presumed. Once the decision document is signed, the permittee's right to proceed can only be changed by using the modification, suspension and revocation procedures of 33 CFR 325.7, unless the State denies the Section 401 Water Quality Certification or nonconcurs with the applicant's CZM consistency determination.

6. *Enforcement:* In some cases, applicants might proceed with the project upon receipt of the provisional permit. The provisional permit is not a valid permit. In such cases, the Corps has a discretionary enforcement action to consider and should proceed as the DE determines to be appropriate. This occurs on occasion during the standard permit transmittal process. Since the Corps is not changing the normal process of sending unsigned permits to the applicant for signature, there should not be an increase in occurrence of such unauthorized activities.

7. *Modification:* a. In most cases the Section 401 Water Quality Certification, including conditions, and/or CZM consistency concurrence, including conditions, will be consistent with the provisional permit. In such cases, the DE will simply sign the final permit enclose the 401 water quality certification and/or CZM consistency concurrence with the final permit (i.e., the signed provisional permit).

b. In a few cases such State approval may necessitate modifications to the Corps preliminary permit decision. Such modifications will be processed in accordance with 33 CFR 325.7.

(1) When the modifications are minor and the DE agrees to such modifications, then a supplement to the provisional decision document may be prepared, as appropriate, and the permit issued with such modifications. (This should usually be done by enclosing the State 401 Water Quality Certification and/or CZM consistency concurrence to the permit, but in a few cases may require a revision to the permit document itself.)

(2) When the modification results in substantial change or measurable

increase in adverse impacts or the Corps does not initially agree with the change, then the modification will be processed and counted as a separate permit action for reporting purposes. This may require a new public notice or additional coordination with appropriate Federal and/or state agencies. The provisional decision document will be supplemented or may be completely rewritten, as necessary.

8. *Denial:* If the State denies the Section 401 Water Quality Certification and/or the State nonconcurs with the applicant's CZM consistency determination, then the Corps permit is denied without prejudice.

9. This guidance expires 31 December 1998 unless sooner revised or rescinded.

For the Director of Civil Works.

3 Encls

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Sample

Provisional Permit Transmittal Letter

Dear _____:

We have completed our review of your permit application identified as [File No., appl. name, etc.] for the following proposed work:

_____

_____

_____

near/in/at_____.

Enclosed is a "PROVISIONAL PERMIT." The provisional permit is NOT VALID and does not authorize you to do your work. The provisional permit describes the work that will be authorized, and the General and Special Conditions [if any] which will be placed on your final Department of the Army (DA) permit, if the State of _____ Water Quality Certification and/or Coastal Zone Management (CZM) consistency requirements are satisfied as described below. No work is to be performed in the waterway or adjacent wetlands until you have received a validated copy of the DA permit.

By Federal law no DA permit can be issued until a State Section 401 Water Quality Certification has been issued or has been waived and/or the State has concurred with a permit applicant's CZM consistency determination or concurrence has been presumed. As of this date the [State 401 certification agency] has not issued a Section 401 Water Quality Certification for your proposed work. If the [State 401 certification agency] fails or refuses to act by [date 401 certification must be issued] the Section 401 Water Quality Certification requirement will be automatically waived. Also, as of this date the [State CZM agency] has not concurred with your CZM consistency determination. If the State does not act by [six months from receipt by the State of the applicant's CZM consistency determination] then concurrence with your CZM consistency determination will automatically be presumed.

Conditions of the State Section 401 Water Quality Certification and/or the State CZM concurrence will become conditions to the final DA permit. Should the State's action on the required certification or concurrence preclude validation of the provisional permit in its current form, a modification to the provisional permit will be evaluated and you will be notified as appropriate. Substantial changes may require a new permit evaluation process, including issuing a new public notice.

Enclosure 1

Final Permit Actions

Normal Permit Process

1. Corps Completes permit decision, and state 401/CZM issued/waived
2. Corps sends unsigned permit to applicant
3. Applicant signs permit and returns with fee
4. Corps signs permit

Draft Permit Process

1. Corps Completes permit decision, but state 401/CZM not complete
2. Corps sends draft permit to applicant
3. State 401/CZM issued waived
4. Applicant signs permit and returns with fee and 401/CZM action
5. Corps reviews 401/CZM action and signs permit

1. The signed draft permit with the attached 401/CZM action is to be treated as the applicant's request for a permit subject to any 401/CZM certification/concurrence including any conditions.

2. If the 401/CZM action results in a modification to the draft permit, then step 4. would be treated as a request for such modification and if we agree with the modification, then the permit would be issued with the modification and the decision document supplemented, as appropriate. If the Corps does not initially agree with the modification, or it involves a substantial change or measurable increase in adverse impacts, then the modification would be processed as a separate permit action for reporting purposes.

Enclosure 2

Once the State has issued the required Section 401 Water Quality Certification and/or concurred with your CZM consistency determination or the dates above have passed without the State acting, and you agree to the terms and conditions of the provisional permit, you should sign and date both copies and return them to us along with your $100.00/$10.00 permit fee]. Your DA permit will not be valid until we have returned a copy to you bearing both your signature and the signature of the appropriate Corps official.

If the State denies the required Section 401 Water Quality Certification and/or nonconcurs with your CZM consistency determination, then the DA permit is denied without prejudice. If you should subsequently obtain a Section 401 Water Quality Certification and/or a CZM consistency determination concurrence, you should contact this office to determine how to proceed with your permit application.

If you have any questions concerning your State Section 401 Water Quality Certification, please contact (State 401 certification contact).

If you have any questions concerning your CZM consistency determination, please contact (State CZM contact).

If you have any other questions concerning your application for a DA permit, please contact [Corps contact] at [Corps contact telephone number].

Provisional Permit Not Valid; Do Not Begin Work

This PROVISIONAL PERMIT is NOT VALID until:

(1) You obtain:

_____ a Section 401 Water Quality Certification from State Agency)

_____ a Coastal Zone Consistency determination concurrence from (State Agency)

(2) You sign and return the enclosed provisional permit with the State Section 401 Water Quality Certification and/or CZM concurrence and the appropriate permit fee as indicated below:

_____ $10.00

_____ $100.00

_____ No fee required

(3) The Corps signs the permit and returns it to you. Your permit is denied without prejudice, if the State denies your Section 401 Water Quality Certification and/or nonconcurs with your Coastal Zone Management consistency determination.

(Do Not Begin Work)

Regulatory Guidance Letter, (RGL 93-2)

RGL 93-2

Date: 23 August 1993, Expires: 31 December 1998

Subject: Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking.

1. Enclosed are two guidance documents signed by the Office of the Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency. The first document provides guidance on the flexibility that the U.S. Army Corps of Engineers should be utilizing when making determinations of compliance with the Section 404(b)(1) Guidelines, particularly with regard to the alternatives analysis. The second Document provides guidance on the use of mitigation banks as a means of providing compensatory mitigation for Corps regulatory Decisions.

2. Both enclosed guidance documents should be implemented immediately. These guidance documents constitute an important aspect of the President's plan for protecting the Nation's wetlands, "Protecting America's Wetlands: A Fair, Flexible and Effective Approach" (published on 24 August 1993).

3. This guidance expires 31 December 1998 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum to the Field

Subject: Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements

1. *Purpose:* The purpose of this memorandum is to clarify the appropriate level of analysis required for evaluating compliance with the Clean Water Act Section 404(b)(1) Guidelines' (Guidelines) requirements for consideration of alternatives. 40 CFR 230.10(a). Specifically, this memorandum describes the flexibility afforded by the Guidelines to make regulatory decisions based on the relative severity of the environmental impact of proposed discharges of dredged or fill material into waters of the United States.

2. *Background:* The Guidelines are the substantive environmental standards by which all Section 404 permit applications are evaluated. The Guidelines, which are binding regulations, were published by the Environmental Protection Agency at 40 CFR part 230 on December 24, 1980. The fundamental precept of the Guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur unless it can be demonstrated that such discharges, either individually or cumulatively, will not result in unacceptable adverse effects on the aquatic ecosystem. The Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 CFR 230.10(a). Based on this provision, the applicant is required in every case (irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent) to evaluate opportunities for use of non-aquatic areas and other aquatic sites that would result in less adverse impact on the aquatic ecosystem. A permit cannot be issued, therefore, in circumstances where a less environmentally damaging practicable alternative for the proposed discharge exists (except as provided for under Section 404(b)(2)).

3. *Discussion:* The Guidelines are, as noted above, binding regulations. It is important to recognize, however, that this regulatory status does not limit the inherent flexibility provided in the Guidelines for implementing these provisions. The preamble to the Guidelines is very clear in this regard:

> Of course, as the regulation itself makes clear, a certain amount of flexibility is still intended. For example, while the ultimate conditions of compliance are "regulatory", the Guidelines allow some room for judgment in determining what must be done to arrive at a conclusion that those conditions have or have not been met.

Guidelines Preamble, "Regulation versus Guidelines", 45 FR 85336 (December 24, 1980).

Notwithstanding this flexibility, the record must contain sufficient information to demonstrate that the proposed discharge complies with the requirements of Section 230.10(a) of the Guidelines. The amount of information needed to make a determination and the level of scrutiny required by the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project.

a. Analysis Associated With Minor Impacts

The Guidelines do not contemplate that the same intensity of analysis will be required for all types of projects but instead envision a correlation between the scope of the evaluation and the potential extent of adverse impacts on the aquatic environment. The introduction to § 230.10(a) recognizes that the level of analysis required may vary with the nature and complexity of each individual case:

> Although all requirements in § 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

40 CFR 230.10

Similarly, § 230.6 ("Adaptability") makes clear that the Guidelines:

> Allow evaluation and documentation for a variety of activities, ranging from those large, complex impacts on the aquatic environment to those for which the impact is likely to be innocuous. It is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex. It is anticipated that substantial numbers of permit applications will be for minor, routine activities that have little, if any, potential for significant degradation of the aquatic environment. *It generally is not intended or expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in such routine cases.*

40 CFR 230.6(9) (emphasis added)

Section 230.6 also emphasizes that when making determinations of compliance with the Guidelines, users:

> Must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. The level of documentation should reflect the significance and complexity of the discharge activity.

40 CFR 230.6(b) (emphasis added)

Consequently, the Guidelines clearly afford flexibility to adjust the stringency of the alternatives review for projects that would have only minor impacts. Minor impacts are associated with activities that generally would have little potential to degrade the aquatic environment and include one, and frequently more, of the following characteristics: Are located in aquatic resources of limited natural function; are small in size and cause little direct impact; have little potential for secondary or cumulative impacts; or cause only temporary impacts. It is important to recognize, however, that in some circumstances even small or temporary fills result in substantial impacts, and that in such cases a more detailed evaluation is necessary. The Corps Districts and EPA Regions will, through the standard permit evaluation process, coordinate with the U.S. Fish and Wildlife Service, National Marine Fisheries Service and other appropriate state and Federal agencies in evaluating the likelihood that adverse impacts would result from a particular proposal.

It is not appropriate to consider compensatory mitigation in determining whether a proposed discharge will cause only minor impacts for purposes of the alternatives analysis required by § 230.10(a).

In reviewing projects that have the potential for only minor impacts on the aquatic environment, Corps and EPA field offices are directed to consider, in coordination with state and Federal resource agencies, the following factors:

(i) Such projects by their nature should not cause or contribute to significant degradation individually or cumulatively. Therefore, it generally should not be necessary to conduct or require detailed analyses to determine compliance with § 230.10(c).

(ii) Although sufficient information must be developed to determine whether the proposed activity is in fact the least damaging practicable alternative, the Guidelines do not require an elaborate search for practicable alternatives if it is reasonably anticipated that there are only minor differences between the environmental impacts of the proposed activity and potentially practicable alternatives. This decision will be made after consideration of resource agency comments on the proposed project. It often makes sense to examine first whether potential alternatives would result in no identifiable or discernible difference in impact on the aquatic ecosystem. Those alternatives that do not may be eliminated from the analysis since § 230.10(a) of the Guidelines only prohibits discharges when a practicable alternative exists which would have less adverse impact on the aquatic ecosystem. Because evaluating practicability is generally the more difficult aspect of the alternatives analysis, this approach should save time and effort for both the applicant and the regulatory agencies.[1] By initially focusing the alternatives analysis on the question of impacts on the aquatic ecosystem, it may be possible to limit (or in some instances eliminate altogether) the number of alternatives that have to be evaluated for practicability.

(iii) When it is determined that there is no identifiable or discernible difference in adverse impact on the environment between the applicant's proposed alternative and all other practicable alternatives, then the applicant's alternative is considered as satisfying the requirements of Section 230.10(a).

(iv) Even where a practicable alternative exists that would have less adverse impact on the aquatic ecosystem, the Guidelines allow it to be rejected if it would have "other significant adverse environmental consequences." 40 CFR 230.10(a). As explained in the preamble, this allows for consideration of "evidence of damages to other ecosystems in deciding whether there is a 'better' alternative." Hence, in applying the alternatives analysis required by the Guidelines, it is not appropriate to select an alternative where minor impacts on the aquatic environment are avoided at the cost of substantial impacts to other natural environmental values.

(v) In cases of negligible or trivial impacts (e.g., small discharges to construct individual driveways), it may be possible to conclude that no alternative location could result in less adverse impact on the aquatic environment within the meaning of the Guidelines. In such cases, it may not be necessary to conduct an offsite alternatives analysis but instead require only any practicable onsite minimization.

This guidance concerns application of the Section 404(b)(1) Guidelines to projects with minor impacts. Projects which may cause more than minor impacts on the aquatic environment, either individually or cumulatively, should be subjected to a proportionately more detailed level of analysis to determine compliance or noncompliance with the Guidelines. Projects which cause substantial impacts, in particular, must be thoroughly evaluated through the standard permit evaluation process to determine compliance with all provisions of the Guidelines.

b. Relationship Between the Scope of Analysis and the Scope/Cost of the Proposed Project

The Guidelines provide the Corps and EPA with discretion for determining the necessary level of analysis to support a conclusion as to whether or not an alternative is practicable. Practicable alternatives are those alternatives that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." 40 CFR 230.10(a)(2). The preamble to the Guidelines provides clarification on how cost is to be considered in the determination of practicability:

> Our intent is to consider those alternatives which are reasonable in terms of the overall scope/cost of the proposed project. The term economic [for which the term "cost" was substituted in the final rule] might be construed to include consideration of the applicant's financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines.

Guidelines Preamble, "Alternatives", 45 FR 85339 (December 24, 1980) (emphasis added).

Therefore, the level of analysis required for determining which alternatives are practicable will vary depending on the type of project proposed. The determination of what constitutes an unreasonable expense should generally consider whether the projected cost is substantially greater than the costs normally associated with the particular type of project. Generally, as the scope/cost of the project increases, the level of analysis should also increase. To the extent the Corps obtains information on the costs associated with the project, such information may be considered when making a determination of what constitutes an unreasonable expense.

The preamble to the Guidelines also states that "[i]f an alleged alternative is unreasonably expensive to the applicant, the alternative is not 'practicable.'" Guidelines Preamble, "Economic Factors", 45 FR 85343 (December 24, 1980). Therefore, to the extent that individual homeowners and small businesses may typically be associated with small projects with minor impacts, the nature of the applicant may also be a relevant consideration in determining what constitutes a practicable alternative. It is important to emphasize, however, that it is not a particular applicant's financial standing that is the primary consideration for determining practicability, but rather characteristics of the project and what constitutes a reasonable expense for these projects that are most relevant to practicability determinations.

4. The burden of proof to demonstrate compliance with the Guidelines rests with the applicant; where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued. 40 CFR 230.12(a)(3)(iv).

5. A reasonable, common sense approach in applying the requirements of the Guidelines' alternatives analysis is fully consistent with sound environmental protection. The Guidelines clearly contemplate that reasonable discretion should be applied based on the nature of the aquatic resource and potential impacts of a proposed activity in determining

[1] In certain instances, however, it may be easier to examine practicability first. Some projects may be so site-specific (e.g., erosion control, bridge replacement) that no offsite alternative could be practicable. In such cases the alternatives analysis may appropriately be limited to onsite options only.

compliance with the alternatives test. Such an approach encourages effective decisionmaking and fosters a better understanding and enhanced confidence in the Section 404 program.

6. This guidance is consistent with the February 6, 1990 "Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines."

Signed: August 23, 1993.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

Michael L. Davis,

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.

Memorandum to the Field

Subject: Establishment and Use of Wetland Mitigation Banks in the Clean Water Act Section 404 (Regulatory Program

1. This memorandum provides general guidelines for the establishment and use of wetland mitigation banks in the Clean Water Act Section 404 regulatory program. This memorandum serves as interim guidance pending completion of Phase I by the Corps of Engineer's Institute for Water Resources study on wetland mitigation banking,[2] at which time this guidance will be reviewed and any appropriate revisions will be incorporated into final guidelines.

2. For purposes of this guidance, wetland mitigation banking refers to the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands or other aquatic habitats expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands permitted under the Section 404 regulatory program. Wetland mitigation banks can have several advantages over individual mitigation projects, some of which are listed below:

(a) Compensatory mitigation can be implemented and functioning in advance of project impacts, thereby reducing temporal losses of wetland functions and uncertainty over whether the mitigation will be successful in offsetting wetland losses.

(b) It may be more ecologically advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation for impacts to many smaller, isolated or fragmented habitats into a single large parcel or contiguous parcels.

(c) Development of a wetland mitigation bank can bring together financial resources and planning and scientific expertise not practicable to many individual mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation.

(d) Wetland mitigation banking proposals may reduce regulatory uncertainty and Provide more cost-effective compensatory mitigation opportunities.

3. The Section 404(b)(1) Guidelines (Guidelines), as clarified by the "Memorandum of Agreement Concerning the Determination of Mitigation under the section 404(b)(1) Guidelines" (Mitigation (MOA) signed February 6, 1990, by the Environmental Protection Agency and the Department of the Army, establish a mitigation sequence that is used in the evaluation of individual permit applications. Under this sequence, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to the aquatic ecosystem. Remaining unavoidable impacts must then be offset through compensatory mitigation to the extent appropriate and practicable. Requirements for compensatory mitigation may be satisfied through the use of wetland mitigation banks, so long as their use is consistent with standard practices for evaluating compensatory mitigation proposals outlined in the Mitigation MOA. It is important to emphasize that, given the mitigation sequence requirements described above, permit applicants should not anticipate that the establishment of, or participation in, a wetland mitigation bank will ultimately lead to a determination of compliance with the section 404(b)(1) Guidelines without adequate demonstration that impacts associated with the proposed discharge have been avoided and minimized to the extent practicable.

4. The agencies' preference for on-site, in-kind compensatory mitigation does not preclude the use of wetland mitigation banks where it has been determined by the Corps, or other appropriate permitting agency, in coordination with the Federal resource agencies through the standard permit evaluation process, that the use of a particular mitigation bank as compensation for proposed wetland impacts would be appropriate for offsetting impacts to the aquatic ecosystem. In making such a determination, careful consideration must be given to wetland functions, landscape position, and affected species populations at both the impact and mitigation bank sites. In addition, compensation for wetland impacts should occur, where appropriate and practicable, within the same watershed as the impact site. Where a mitigation bank is being developed in conjunction with a wetland resource planning initiative (e.g., Special Area Management Plan, State Wetland Conservation Plan) to satisfy particular wetland restoration objectives, the permitting agency will determine, in coordination with the Federal resource agencies, whether use of the bank should be considered an appropriate form of compensatory mitigation for impacts occurring within the same watershed.

5. Wetland mitigation banks should generally be in place and functional before credits may be used to offset permitted wetland losses. However, it may be appropriate to allow incremental distribution of credits corresponding to the appropriate stage of successful establishment of wetland functions. Moreover, variable mitigation ratios (credit acreage to impacted wetland acreage) may be used in such circumstances to reflect the wetland functions attained at a bank site at a particular point in time. For example, higher ratios would be required when a bank is not yet fully functional at the time credits are to be withdrawn.

6. Establishment of each mitigation bank should be accompanied by the development of a formal written agreement (e.g., memorandum of agreement) among the Corps, EPA, other relevant resource agencies, and those parties who will own, develop, operate or otherwise participate in the bank. The purpose of the agreement is to establish clear guidelines for establishment and use of the mitigation bank. A wetlands mitigation bank may also be established through issuance of a Section 404 permit where establishing the proposed bank involves a discharge of dredged or fill material into waters of the United States. The banking agreement or, where applicable, special conditions of the permit establishing the bank should address the following considerations, where appropriate:

(a) Location of the mitigation bank;

(b) Goals and objectives for the mitigation bank project;

[2] The Corps of Engineers Institute for Water Resources, under the authority of Section 307(d) of the Water Resources Development Act of 1990, is undertaking a comprehensive two-year review and evaluation of wetland mitigation banking to assist in the development of a national policy on this issue. The interim summary report documenting the results of the first phase of the study is scheduled for completion in the fall of 1993.

(c) Identification of bank sponsors and participants;

(d) Development and maintenance plan;

(e) Evaluation methodology acceptable to all signatories to establish bank credits and assess bank success in meeting the project goals and objectives;

(f) Specific accounting procedures for tracking crediting and debiting;

(g) Geographic area of applicability;

(h) Monitoring requirements and responsibilities;

(i) Remedial action responsibilities including funding; and

(j) Provisions for protecting the mitigation bank in perpetuity.

Agency participation in a wetlands mitigation banking agreement may not, in any way, restrict or limit the authorities and responsibilities of the agencies.

7. An appropriate methodology, acceptable to all signatories, should be identified and used to evaluate the success of wetland restoration and creation efforts within the mitigation bank and to identify the appropriate stage of development for issuing mitigation credits. A full range of wetland functions should be assessed. Functional evaluations of the mitigation bank should generally be conducted by a multi-disciplinary team representing involved resource and regulatory agencies and other appropriate parties. The same methodology should be used to determine the functions and values of both credits and debits. As an alternative, credits and debits can be based on acres of various types of wetlands (e.g., National Wetland Inventory classes). Final determinations regarding debits and credits will be made by the Corps, or other appropriate permitting agency, in consultation with Federal resource agencies.

8. Permit applicants may draw upon the available credits of a third party mitigation bank (i.e., a bank developed and operated by an entity other than the permit applicant). The section 404 permit, however, must state explicitly that the permittee remains responsible for ensuring that the mitigation requirements are satisfied.

9. To ensure legal enforceability of the mitigation conditions, use of mitigation bank credits must be conditioned in the section 404 permit by referencing the banking agreement or section 404 permit establishing the bank; however, such a provision should not limit the responsibility of the section 404 permittee for satisfying all legal requirements of the permit.

Signed: August 23, 1993.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

Michael L. Davis,

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.

Regulatory Guidance Letter (RGL 93–3)

RGL 93–3

Issued: September 13, 1993, Expires: not applicable

Subject: Rescission of Regulatory Guidance Letters (RGL) 90–5, 90–7, and 90–8

1. On 25 August 1993 the final "Excavation Rule" was published in the **Federal Register** (58 FR 45008) and becomes effective on 24 September 1993. This regulation modifies the definition of "Discharge of Dredged Material" to address landclearing activities (see 33 CFR 323.2(d)); modifies the definitions of "Fill Material" and "Discharge of Fill Material" to address the placement of pilings (see 33 CFR 323.2(e) and (f) and 323.3(c)); and modifies the definition of "waters of the United States" to address prior converted cropland (see 33 CFR 328.(a)(8)).

2. Therefore, RGL 90–5, Subject: "Landclearing Activities Subject to Section 404 Jurisdiction"; RGL 90–7, Subject: "Clarification of the Phrase 'Normal Circumstances' as it pertains to Cropped Wetlands"; and RGL 90–8, Subject: "Applicability of section 404 to Pilings"; are hereby rescinded effective 24 September 1993. Furthermore, although RGL 90–5, Subject: "Landclearing Activities Subject to section 404 Jurisdiction" expired on 31 December 1992 it should continue to be applied until 24 September 1993.

3. In addition, RGL's 90–5, 90–7, and 90–8 as of 24 September 1993 will no longer be used for guidance since the guidance contained in those RGL's has been superseded by the regulation.

For the Director of Civil Works.

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 94–2429 Filed 2–2–94; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Determination of Noncompetitive Financial Assistance; National Council on Radiation Protection and Measurements

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2)(i)(G), it intends to award a grant in the amount of $50,000 to the National Council on Radiation Protection and Measurements (NCRP) in support of scientific evaluation work in operational radiation protection, radionuclides in the environment, guidance on occupational and public exposure resulting from diagnostic nuclear medicine procedures, and practical guidance on the evaluation of human exposures to radiofrequency radiation. Pursuant to Public law 88–376, the NCRP was chartered to collect, analyze, develop, and disseminate in the public interest information and recommendations pertaining to radiation protection. The NCRP's cooperation with national and international organizations, governmental and private, ensures that the recommendations provided incorporate the latest scientific information for the protection of radiation workers and members of the general public. Under this grant award, the NCRP seeks to provide guidance and recommendations that will minimize human exposure and, thus, reduce health effects of radiation. Eligibility for this award is therefore restricted to NCRP.

FOR FURTHER INFORMATION CONTACT: Fran Kimball, Office of Health Physics, and Industrial Hygiene, U.S. Department of Energy, Washington, DC 20585, 301–903–4691.

Issued in Oak Ridge, Tennessee on December 13, 1993.

Peter D. Dayton,

HCA Designee, Oak Ridge Operations Office.

[FR Doc. 94–2446 Filed 2–2–94; 8:45 am]

BILLING CODE 6450–01–M

Grant Award to the University of Massachusetts

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the University of Massachusetts for continuing research efforts in support of the DOE Office for Building Technologies programs. This project seeks to improve the methods used to calculate fenestration system (windows, skylights, etc.) U-values (measures of heat transfer characteristics) and solar heat gain coefficients.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: DOE's programmatic evaluation (in accordance with 10 CFR 600.7(b)(2)(ii)(D))completed for this proposal resulted in a recommendation to fund this grant application for the following reasons.

1. The proposed research will contribute to the DOE mission by helping to identify and develop accurate, unbiased procedures for evaluating and comparing window thermal performance. Successful completion of this research would advance the goal of developing and implementing testing procedures that given a reliable picture of window thermal performance characteristics. Displaying this information on window labels will enable people to make informed choices when purchasing window systems. This will lead to lead to reduced energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption. Approximately one-sixth of that energy is wasted by unwanted radiation transfer through windows.

2. Dr. William P. Goss and his research associates will be performing this research. Dr. Goss has been directing this effort for the past 5 years. As the principal investigator for this research effort, Dr. Goss is the most qualified individual available to accomplish this project. He has expertise in thermal measurements and computer modeling of fenestration product performance.

3. The budget proposed for the anticipated work was reviewed and is considered to be appropriate and adequate. The major public benefit to be derived from this project is the development of an accurate, unbiased means to compare and evaluate window energy performance that will be used to reduce energy use in buildings.

4. The activity to be funded is an extension of work currently being funded by DOE through a cooperative agreement. Competition for the instant effort would have a significant adverse impact on the continuity of current efforts because this research is an integral part of the DOE building windows program. A significant time delay in the research effort would result if a competitive solicitation were undertaken and, because of the unique, ground-breaking nature of this research, no other potential applicants have as much experience or the capability to do this work in the amount of time and for the amount of money that is proposed by the applicant. A delay in the research would likely cost DOE more money to fund a comparable effort and the period of performance would be longer because of the time needed by the applicant to develop the required technical expertise.

The major objective of this research project is to improve the methods used to calculate fenestration system (windows, skylights, etc.) U-factors (measures of heat transfer characteristics) and solar heat gain coefficients.

To meet this objective, the University of Massachusetts has chose to pursue a research plan divided into three general tasks. These tasks are: (1) Perform fenestration U-factor modeling work; (2) develop fenestration U-factor test methods; and (3) provide technical support for the development of standard fenestration U-factor performance testing procedures that could be established internationally.

A total of $1,371,500 will be required for a sixty (60) month period, of which $1,223,000 are DOE funds. In FY 1994 $180,000 of DOE funds are expected to be available for award in February. The University of Massachusetts' cost share is anticipated to be $148,500 over the 60 month period.

Issued in Chicago, Illinois, on January 25, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–2447 Filed 2–2–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EL94–20–000]

Gordonsville Energy, L.P.; Filing

January 28, 1994.

Take notice that on January 13, 1994, Gordonsville Energy, L.P. (Gordonsville) tendered for filing a Petition for Waiver of the Commission's regulations under the Public Utility Regulatory Policies Act. Gordonsville petitions the Commission to waive the ownership requirements for qualifying cogeneration facilities as set forth in § 292.206(b), 18 CFR 292.206(b) of the Commission's regulations implementing section 201 of the Public Utility Regulatory Policies Act of 1978, as amended (PURPA) with respect to Gordonsville's one hundred percent (100%) ownership interest in two natural gas and oil-fired qualifying cogeneration facilities (the "Project") located in Gordonsville, Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2375 Filed 2–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–68–001]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 28, 1994.

Take notice that on January 25, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 1994:

Second Revised Second Revised Sheet No. 5
Second Revised Second Revised Sheet No. 6
Second Revised Second Revised Sheet No. 10

MRT states that the purpose of the instant filing is to revise the Gas Supply Realignment Cost (GSRC) Surcharges applicable to Rate Schedules FTS and SCT originally filed by MRT on December 1, 1993 and accepted by Commission order dated December 30, 1993 in Docket No. RP94–68. MRT states that the revised GSRC Surcharges proposed reflect (1) the use of the additional billing determinants associated with the seasonal southbound contracts in the surcharge derivation, and (2) a revised allocation of GSRC between MRT's Market Zone and Field Zone based on the proportion of MRT's fixed transmission cost of service allocated to each zone as set forth in the January 14, 1994 filing in Docket Nos. RS92–43 and RP93–4.

MRT states that a copy of its filing has been mailed to each of its jurisdictional

customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2378 Filed 2–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–80–000]

National Fuel Gas Supply Corp.; Technical Conference

January 28, 1994.

In the Commission's order issued on January 12, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Wednesday, February 9, 1994 at 2 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2374 Filed 2–2–94; 8:45 am]

BILLING CODE 6717–01–M

Overland Trail Transmission Co.; Pre-Filing Conference

January 28, 1994.

Take notice that Commission staff will meet with representatives of Overland Trail Transmission Company in an informal, pre-filing conference to discuss Overland Trail's petition for rate approval under § 284.123(b)(2) of the Commission's regulations which must be filed no later than March 31, 1994. The conference will be held on Wednesday, February 9, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Attendance will be open to any interested party. For additional information, please contact Mark Hegerle at (202) 208–0927.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2379 Filed 2–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–192–005]

Texas Eastern Transmission Corp.; Proposed Changes of FERC Gas Tariff

January 28, 1994.

Take notice that on January 26, 1994, pursuant to and in compliance with the Commission's January 19, 1994 Order in Docket No. RP93–192 (January 19 Order), Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Proposed to be Effective October 3, 1993

3rd Sub Original Sheet No. 253F
2nd Rev 2nd Sub 1st Rev Sheet No. 627

Proposed to be Effective November 1, 1993

2nd Sub Original Sheet No. 627A

Texas Eastern states that the January 19 Order accepted certain tariff sheets filed in Docket No. RP93–192–002 on October 18, 1993, and in Docket No. RP93–192–004 on November 4, 1993, to be effective October 3, 1993, subject to Texas Eastern filing certain revisions as specified therein.

Texas Eastern states that in compliance with the January 19 Order, it hereby submits 3rd Sub Original Sheet No. 253F, to be effective October 3, 1993. Such tariff sheet provides that the GSR Demand Surcharge will only be collected on those Rate Schedule VKFT quantities that do not enter Texas Eastern's mainline system.

Further, Texas Eastern states that in compliance with the January 19 Order, it hereby submits 2nd Rev 2nd Sub 1st Rev Sheet No. 627, to be effective October 3, 1993, to revise Section 15.2(C)(4) of the General Terms and Conditions so that separate revenue and cost of service comparisons are performed for both Rate Schedules LLFT and VKFT. Texas Eastern also submits 2nd Sub Original Sheet No. 627A to reflect identical changes in Section 15.2(c)(4) to the tariff sheet effective November 1, 1993.

The proposed effective dates of the tariff sheets are October 3, 1993 and November 1, 1993, as shown above.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Texas Eastern states that copies of this filing have also been served on Santa Fe Energy Resources, Inc., Hadson Gas Systems, Inc. and Murphy Exploration and Production Company.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2376 Filed 2–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–908–000]

Union Electric Co.; Filing

January 28, 1994.

Take notice that Union Electric Company (UE), tendered for filing a Notice of Cancellation of Supplement No. 1.7 to FERC Rate Schedule FERC No. 152 between Associated Electric Cooperative, Inc. and UE.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2377 Filed 2–2–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4832–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 7, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (NSPS Subparts AA and AAa)–Information Requirements (EPA ICR No. 1060.07; OMB No. 2060–0038). This is a request for renewal of a currently approved information collection.

Abstract: The owner or operator of electric arc furnaces and Argon-Oxygen decarburization vessels must provide EPA, or the delegated State regulatory authority with the following one-time-only reports: notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. The owner or operator is also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

The owner or operator of electric arc furnaces controlled by a direct shell evacuation system must install and maintain a continuous monitoring device that continuously records pressure inside the electric arc furnaces (EAF), and records 15 minute integrated averages.

The owner or operator must also submit semiannual reports of unacceptable operation of the affected facilities, and semiannual reports of exceedances of control device opacity.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 23 hours per response for reporting and 311 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of electric arc furnaces and argon-oxygen decarburization vessels.

Estimated No. of Respondents: 60.

Estimated No. of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 21,429.

Frequency of Collection: Initial notifications and reporting.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: January 27, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–2440 Filed 2–2–94; 8:45 am]

BILLING CODE 6560–60–F

[FRL–4832–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 7, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Information Requirements for Importation of Nonconforming Vehicles. (EPA ICR No. 0010.07; OMB No. 2060–0095). This ICR requests renewal of the existing clearance.

Abstract: Importers of nonconforming motor vehicles or engines for resale must provide EPA with information sufficient to determine whether these vehicles/engines have been brought into conformity with Federal requirements. The information required includes: vehicle/engine identification, vehicle/engine emissions test results, U.S. customs entry data, and importer/owner name and address, together with certification that all the information given is correct. EPA uses this information to ensure compliance with the Clean Air Act.

Burden Statement: Public reporting burden for this collection of information is estimated to average 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information. Public recordkeeping burden for this collection of information is estimated to average 75 hours per respondent.

Respondents: Importers of nonconforming vehicles or engines for resale

Estimated Number of Respondents: 6808.

Estimated Total Annual Burden on Respondents: 5800 hours.

Frequency of Collection: Upon importation of vehicle of engine.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: January 27, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–2439 Filed 2–2–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4933–2]

Michigan; Clean Air Act Section 182(f) NO_x RACT Exemption Petition

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of availability.

SUMMARY: The USEPA is announcing that the State of Michigan has filed a petition proposing that the southeast Michigan moderate ozone nonattainment area be exempted from the requirement to implement oxides of nitrogen (NO_x) Reasonably Available Control Technology (RACT) controls pursuant to section 182(f) of the Clean Air Act (Act). This petition is available for public review.

FOR FURTHER INFORMATION CONTACT: Daniel Meyer, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION: On November 15, 1993 the Michigan Department of Natural Resources submitted a petition proposing that the southeast Michigan moderate ozone nonattainment area be exempted from the requirement to implement NO_x RACT controls pursuant to section 182(f) of the Act. More specifically, this exemption request is being made according to provisions cited in a USEPA memorandum dated September 17, 1993 from Michael Shapiro, to the Regional Offices. The exemption request is based on monitoring data which demonstrates that the ozone standard has been attained in this nonattainment area for the past 3 years, 1991 through 1993.

Dated: December 30, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–2442 Filed 2–2–94; 8:45 am]

BILLING CODE 6450–01–P

[FRL–4832–9]

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Act of 1988" (Pub. L. 100–656) established the Small Business Competitiveness Demonstration Program and designated ten (10) agencies, including the Environmental Protection Agency (EPA), to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366) extended the demonstration program until September 30, 1996, and made certain changes in the procedures for operation of the demonstration program.

The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to compete successfully on an unrestricted basis. The four (4) industry groups are: Construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection services); and non-nuclear ship repair. Under the program, when a participating agency does not meet its small business participation goal, small business set-asides must be reinstated in the particular industry group. If small business goals are achieved in subsequent quarters, the agency may cancel the set-asides and return to full and open competition. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. The program reserves for emerging small businesses procurements under $25,000 for construction, trash/garbage collection services, and non-nuclear ship repair, and under $50,000 for architect-engineer services.

This notice announces modifications to EPA's solicitation practices under the demonstration program based on a review of the Agency's performance during the period from July 1, 1992 to June 30, 1993. Modifications to solicitation practices are set forth in the Supplementary Information section below and apply to solicitations issued on or after the date of publication of this notice.

EFFECTIVE DATE: This notice is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers at (202) 260–6028.

SUPPLEMENTARY INFORMATION:

Construction Services in SIC Codes 1629, 1761, and 1796

1. Procurements over $25,000 for these SIC codes will be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

2. Architect-Engineer Services (All PSC Codes Under the Demonstration Program

Procurements over $50,000 for all architect-engineer services will be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Dated: January 4, 1994.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 94–2438 Filed 2–2–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4833–7]

Revision of the Vermont National Pollutant Discharge Elimination System Program To Authorize the Issuance of General Permits

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permit Program of the State of Vermont.

SUMMARY: On August 26, 1993, the Regional Administrator for the Environmental Protection Agency (EPA), Region I, approved the State of Vermont's National Pollutant Discharge Elimination System (NPDES) General Permit Program. On April 22, 1993, the Vermont Agency of Natural Resources (Vermont ANR) submitted a formal request for approval to revise its NPDES Permit Program to authorize the issuance of general NPDES permits. This action authorizes the State of Vermont to issue general permits in lieu of individual NPDES permits. Based on its review of Vermont's legal authority, EPA determined that no statutory or regulatory changes were necessary for the State to administer a general permit program. EPA has thus determined Vermont's program modification to be non-substantial.

FOR FURTHER INFORMATION CONTACT: William Wandle, U.S. Environmental

Protection Agency, Region I (WMN), John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 565–3585.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate the discharge of wastewater which results from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring and are more appropriately controlled under a general permit rather than by individual permits.

Vermont was authorized to administer the NPDES program on March 11, 1974. As previously approved, the State's program did not include provisions for the issuance of general permits. A number of categories of discharges can be appropriately regulated by general permits. For these reasons, the Vermont ANR requested a revision of the State's NPDES program to provide for the issuance of general permits. The categories proposed for coverage under the general permit program include: Storm water discharges, non-contact cooling water, non-pollution discharges and classes of discharges where individual permits for such a class would be substantially similar.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Vermont submitted in support of its request a program description, an Amendment to the Memorandum of Agreement, and copies of the relevant statutes and regulations for implementing the program. In addition, the State submitted a statement, dated November 20, 1992, by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permit program as required by 40 CFR 123.23(c). The program description supplementing the original application for the NPDES program authority to administer the general permit program includes the authority to perform each of the activities set forth in 40 CFR 122.28. The Amendment to the Memorandum of Agreement between the State of Vermont ANR and EPA, Region I designates the procedures through which general permits will be issued and administered by the State. Based upon Vermont's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permit program.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

Today's **Federal Register** notice announces the approval of Vermont's authority to issue general permits. EPA provides **Federal Register** notice of actions by the Agency approving or modifying a State NPDES program. The following table provides the public with a current listing of the status of NPDES permitting authority throughout the country.

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this State General Permit Program will not have a significant impact on a substantial number of small entities. Approval of the Vermont NPDES State General Permit Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Vermont NPDES State General Permits Program merely provides a simplified administrative process.

Dated: January 25, 1994.

Patricia L. Meaney,

Acting Regional Administrator.

STATE NPDES PROGRAM STATUS

12/03/93

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75			03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74			10/23/92
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79		01/04/84
Indiana	01/01/75	12/09/78		04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85		*11/24/93
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	06/07/83 *	11/29/93
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81		04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78		07/27/92

STATE NPDES PROGRAM STATUS—Continued

12/03/93

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved general permits program
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80		10/15/92
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90		01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78		08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82	[b]08/26/93
Virgin Islands	06/30/76			
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73		09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81		09/24/91
TOTALS	39	34	27	38

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 25

[a] New.

[b] This Action.

[FR Doc. 94–2436 Filed 2–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 27, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0157.

TItle: Section 73.99, Presunrise Service Authorization (PSRA) and Postsunset Service Authorization (PSSA).

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 360 responses; .25 hours average burden per response; 90 hours total annual burden.

Needs and Uses: Section 73.99(e) requires the licensee of an AM broadcast station intending to operate with a presunrise or postsunset service authorization to submit by letter the licensee's name, call letters, location, the intended service, and a description of the method whereby any necessary power reduction will be achieved. Upon submission of this information, operation may begin without further authority. The letter is used by FCC staff to maintain complete technical information about the station to ensure that the licensee is in full compliance with the Commission's rules and will not cause interference to other stations..

OMB Number: 3060–0240.

TItle: Section 74.651, Equipment Changes.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 24 responses; 1 hour average burden per response; 24 hours total annual burden.

Needs and Uses: Section 74.651(b) requires licensees of TV auxiliary broadcast stations to notify the FCC in writing of equipment changes which may be made at licensee's discretion without use of a formal application form. The data is used by FCC staff to maintain complete technical records regarding a licensee's facilities.

OMB Number: 3060–0241.

TItle: Section 74.633, Temporary Authorization.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 60 responses; 2 hours average burden per response; 120 hours total annual burden.

Needs and Uses: Section 74.633 requires that licensees of television auxiliary broadcast stations submit an informal request for special temporary authority to operate that station on a temporary basis under certain circumstances. The data is used by FCC staff to ensure that interference will not be caused to other established stations.

OMB Number: 3060–0242.

TItle: Section 74.604, Interference Avoidance.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 1 response; 1 hour average burden per response; 1 hour total annual burden.

Needs and Uses: Licensees assigned a common channel for TV pickup, TV studio transmitter link, or TV relay purposes in the same area, where simultaneous operation is contemplated, shall take such steps as may be necessary to avoid mutual interference. Section 74.604 requires that the Commission be notified if a mutual agreement to avoid interference cannot be reached. The data is used by FCC staff to take such actions as may be necessary to assure an equitable distribution of available frequencies, thereby preventing mutual interference.

OMB Number: 3060–0474.

TItle: Section 74.1263, Time of Operation.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 75 responses; .50 hours average burden per response; 38 hours total annual burden.

Needs and Uses: Section 74.1263(c) requires licensees of FM translator or booster stations to notify the Commission of its intent to discontinue operations for 30 or more consecutive days. In addition, licensees must notify the Commission within 48 hours of the stations' return to operation. Section 74.1263(d) requires FM translator or booster station licensees to notify the Commission of its intent to permanently discontinue operations and to forward the station license to the FCC for cancellation. The data is used by FCC staff to keep records up-to-date. These notifications inform FCC staff that frequencies are not being used for a specified amount of time and that frequencies have become available for other users.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–2404 Filed 2–2–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Loba Corp., 3200 NW 77th Court, Miami, FL 33122. Officers: Juan Ramon Poll, President, Demetrio Pina, Vice President, Vilma Pina, Secretary, Raul Cabrera, Treasurer

Sterling International Forwarders, Inc., 1716 NW 82nd Ave., Miami, FL 33126. Officers: Aurelia Sierra, President/Secretary, Reynaldo Borges, Treasurer, Miguel Turbay, Registered Agent

Perfectransport, Inc., 22 Bonnie Lane, Colonia, NJ 07067. Officer: Astrid Fisco-Heinlein, President/CEO

International Transport Services Inc., 20 Lafayette Place, Kenilworth, NJ 07033. Officers: Yaron Nagrin, President/Treasurer, Tamar Nagrin, Vice President/Secretary

Mary Ocean International Freight, 2644 W. Pico Blvd., Los Angeles, CA 90006. Jorge L. Rojas, Sole Proprietor

Olympic International Freight Forwarders, Inc., 4411 NW 74th Ave., Miami, FL 33166. Officers: Teresa Guzman, President, Jose L. Guzman, Stockholder, Rodrigo Guzman, Vice President

Maritime Terminal, Inc., Whalers' Wharf, New Bedford, MA 02740. Officers: David Wechsler, President, Richard Gwinn, Director/Stockholder, Frederick P. McBrier, Vice President/Director/Stockh.

Oilfield Supply and Service Company, 6741 Satsuma Drive, Houston, TX 77041. Officers: Eleonora G. Lucas, President, Edward D. Quinn, Vice President

Cheetah Express Freight Forwarding, 20336 N.W. 55th Court, Miami, FL 33054. Lucia Alcala, Sole Proprietor

By the Federal Maritime Commission.

Dated: January 28, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–2372 Filed 2–2–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3350
Name: Puget Sound Warehousing, Inc.
Address: P.O. Box 1375, Tacoma, WA 98401
Date Revoked: December 2, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3667
Name: Atlant (USA), Inc.
Address: 1609 S. Bentley Ave., #4, Los Angeles, CA 90025
Date Revoked: December 10, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3339
Name: ASL Forwarding, Inc.
Address: 114 E. 32nd Street, Ste. 703, New York, NY 10016
Date Revoked: December 10, 1993
Reason: Surrendered license voluntarily.

License Number: 1862
Name: Merit Brokerage Co., Inc.
Address: 2950 Los Feliz Blvd., Ste. 105, Los Angeles, CA 90039
Date Revoked: December 31, 1993
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–2414 Filed 2–2–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New collection; *Title of Information Collection:* Evaluation of the Medicare Case Management Demonstration; *Form No.:* HCFA–161; *Use:* To assess the impact of case management for patients with high cost conditions on quality of care, satisfaction with care, and use and cost of services not covered by Medicare; *Frequency:* One time; *Respondents:* Individuals or households; *Estimated Number of Responses:* 1,800; *Average Hours Per Response:* .28; *Total Estimated Burden Hours:* 504.

2. *Type of Request:* New Collection; *Title of Information Collection:* Evaluation of the Medicaid Uninsured Demonstrations; *Form No.:* HCFA–R–160; *Use:* Telephone surveys of individual purchasers and employers offering the demonstration insurance package and comparison group members. Surveys will collect information on demographic characteristics, prior insurance coverage, health status, access to care, and use of services, as well as, employer reasons for participating and their experience with the demonstration; *Frequency:* Annually; *Respondents:* Individuals or households; *Estimated Number of Responses:* Individuals (2,002), Employers (196); *Average Hours Per Response:* Individuals (.42), Employers (.25); *Total Estimated Burden Hours:* 1,508.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Internal Revenue Service (IRS), Social Security Administration (SSA), and HCFA Data Match; *Form No.:* HCFA–R–137; *Use:* Employers identified through a match of IRS, SSA, and Medicare records will be contacted concerning group health plan coverage of identified individuals to ensure compliance with Medicare Secondary Payor provisions; *Frequency:* Annually; *Respondents:* Nonprofit organizations, Federal agencies or employees, businesses or other for profit; *Estimated Number of Responses:* 423,095; *Average Hours Per Response:* 5.8560843; Total Estimated Burden Hours: 2,477,680.

4. *Type of Request:* Extension; *Title of Information Collection:* Analysis of Malpractice Premium Data; *Form No.:* HCFA–R–143; *Use:* Survey of physician owned medical liability insurers for use in computing the input component of the physician liability component of the Geographic Practice Cost Index and the Medicare Economic Index; *Frequency:* Annually; *Respondents:* State or local governments, Small businesses or organizations, Nonprofit organizations; *Estimated Number of Responses:* Reporting (544), Recordkeeping (68); *Average Hours Per Response:* Reporting (.25), Recordkeeping (1); *Total Estimated Burden Hours:* 204.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Emergency & Foreign Hospital Services—Beneficiary Statement in Canadian Travel Claims; *Form No.:* HCFA–R–96; Use: In Canadian travel claims, a statement is required from the beneficiary indicating point of entry into Canada; route being traveled at time of emergency, and an explanation of any deviation from intended route or nonroutine stopover. The intermediary uses this information to determine if the beneficiary was traveling between Alaska and another State through Canada by the most direct route without unreasonable delay to acquire medical care and thus, entitled to benefits; *Frequency:* On occasion; *Respondents:* Individuals or households; *Estimated Number of Responses:* 1,700; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 425. (recordkeeping).

6. *Type of Request:* Revision; *Title of Information Collection:* Survey Report Form; *Form No.:* HCFA–1557; *Use:* This survey form is an instrument used by the State agency to record data collected in order to determine compliance with Clinical Laboratory Improvement Amendments. This information is needed for laboratory certification and recertification; *Frequency:* Biennially; *Respondents:* State or local governments, Businesses or other for profit, Federal agencies or employees, Small businesses or organizations; *Estimated Number of Responses:* 31,200; *Average Hours Per Response:* .54; *Total Estimated Burden Hours:* 16,848. (recordkeeping).

7. *Type of Request:* Extension; *Title of Information Collection:* Medicaid Management Information System (MMIS); *Form No.:* HCFA–R–4; *Use:* The MMIS is a State operated, federally mandated, computer system used for automated Medicaid claims processing and information retrieval for program management. Data elements represent the federally imposed recordkeeping requirements of MMIS; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 48; *Average Hours Per Response:* 45,965; *Total Estimated Burden Hours:* 2,206,320.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: January 26, 1994.

John A. Streb,

Director, Management Planning and Analysis Staff, Office of Budget and Administration, Health Care Financing Administration.

[FR Doc. 94–2425 Filed 2–2–94; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Cancer Institute; Meeting of the Cancer Biology-Immunology Contracts Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, on February 25, 1994, at the Executive Plaza North Building, Conference room G, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on February 25 from 8:30 am to 9:30 am to discuss administrative details. Attendance by the public will be limited to space available. In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 25 from 9:30 am to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North Building, room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892–9003, (301) 496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 9000 Rockville Pike, room 609, Bethesda, Maryland 20892–9003, (301) 496–7575, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: January 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2454 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on February 22–23, 1994. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: National Cancer Advisory Board.

Acting Executive Secretary: Dr. Marvin Kalt, Executive Plaza North, room 600A, Bethesda, MD 20892; (301) 496–5147.

Dates of Meeting: February 22–23, 1994.

Place of Meeting: Building 31C, Conference Room 10.

Open: February 22—8 a.m. to approximately 12 noon.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations.

Closed: February 22—3 p.m. to recess.

Agenda: For review and discussion of individual grant applications.

Open: February 23—8 a.m. to adjournment.

Agenda: Policy and Scientific Presentations, Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Ms. Cherie Nichols, Building 31, room 11A19, Bethesda, MD 20892; (301) 496–5515.

Date of Meeting: February 22, 1994.

Place of Meeting: Building 31C, Conference Room 8.

Open: 1 p.m. to 2 p.m.

Agenda: To discuss High Impact/ Substantial Grant Applications.

Name of Committee: Subcommittee on Minority Health, Research and Training.

Executive Secretaries:

Dr. Lemuel Evans, Executive Plaza North, room 620C, Bethesda, MD 20892; (301) 496–7344.

Dr. Vincent Cairoli, Executive Plaza North, room 520, Bethesda, MD 20892; (301) 496–8580.

Date of Meeting: February 22, 1994.

Place of Meeting: Building 31C, Conference Room 9.

Open: 1 p.m. to 2 p.m.

Agenda: To discuss issues related to minority research and training.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300, Bethesda, MD 20892; (301) 496–8537.

Date of Meeting: February 22, 1994.

Place of Meeting: Building 31C, Conference 9.

Open: 2 p.m.—3 p.m.

Agenda: A report on the status and use of the Cancer Centers Program Database.

Name of Committee: Subcommittee on Environmental Carcinogenesis and the Subcommittee on Women's Health and Cancer.

Executive Secretaries:

Dr. Richard Adamson, Building 31, room 11A03, Bethesda, MD 20892; (301) 496–6618.

Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5534.

Date of Meeting: February 22, 1994.

Place of Meeting: Building 31C, Conference 8.

Open: 5 p.m. until 6:30 p.m.

Agenda: To discuss the Long Island Breast Cancer Study.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: January 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2455 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, February 28, 1994. The meeting will be held in Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. until adjournment for program review and concept review of proposed research projects. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Sandra Carter at 301–496–4345 in advance of the meeting.

The Committee Management Office, National Cancer Institute, Executive Plaza North, room 630, 6130 Executive Boulevard, Rockville, Maryland 20892 (301–496–5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, Building 31, room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301–496–3251) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: January 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2456 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of National Institute of Dental Research Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of

the NIDR Special Grants Review Committee, National Institute of Dental Research, February 22–24, 1994, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814. The meeting will be open to the public from 8:30 to 9 a.m. on February 22 for general discussions. Attendance by the public is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contract Dr. William Gartland (301/594–7632) in advance of the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 22 and 23 from 9 a.m. to recess, and on February 24 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, NIH, Westwood Building, room 519, Bethesda, MD 20892, (telephone 301/594–7632) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health.)

Dated: January 30, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2453 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), February 23, 1994, National Institutes of Health, 1550 East Indian School Road, Phoenix, Arizona 85014. This meeting will be open to the public on February 23 from 8:30 a.m. to 10 a.m. and 10:30 a.m. to 12:30 p.m. The open portion of the meeting will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 23 from 10 a.m. to 10:30 a.m. and from 12:30 p.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualification and performance, the competence of individual investigations, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, room 9A19, Bethesda, Maryland 20892. For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, two weeks prior to the meeting date.

(Catalog of Federal Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematolgy Research, National Institutes of Health.)

Dated: January 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2458 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Disease (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institutes of Diabetes and Digestive and Kidney Diseases, National Institute of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Scientific Review Administrators indicated.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrators at least two weeks prior to the meeting date.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Scientific Review Administrator: Michael W. Edwards, Ph.D., Westwood Building, room 607, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–594–9300.

Dates of Meeting: March 10–11, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: March 10, 7:00 p.m.—7:15 p.m.; March 11, 7:45 a.m.—8:00 a.m.

Closed: March 10, 7:15 p.m.—recess; March 11, 8:00 a.m.—adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Scientific Review Administrator: Daniel Matsumoto, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–594–7587.

Dates of Meeting: March 3–4, 1994.

Place of Meeting: Holiday Inn Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: March 3, 8:30 a.m.—9:00 a.m.; March 4, 8:30 a.m.—9:00 a.m.

Closed: March 3, 9:00 a.m.—recess; March 4, 9:00 a.m.—adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Scientific Review Administrator: Ann A. Hagan, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–594–7575.
Dates of Meeting: March 4, 1994.
Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: March 4, 8:00 a.m.—8:15 a.m.
Closed: March 4, 8:15 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: January 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2459 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Meeting: Nursing Science Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Institute of Nursing Research, February 24–25, 1994, Holiday Inn Bethesda, Gallery Room, 8120 Wisconsin Avenue, Bethesda, Maryland 20892.

This meeting will be open to the public on February 24 from 8:30 a.m. to 10 a.m. Agenda items to be discussed will include a Report from the Director, NINR, an Administrative Report by the Scientific Review Administrator, and consideration of future meeting dates.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 24 from 10 a.m. to adjournment on February 25 for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Ernest Marquez, 301–594–7865, in advance of the meeting.

Dr. Mary Stephens-Frazier, Scientific Review Administrator, Nursing Science Review Section, National Institute of Nursing Research, National Institutes of Health, Westwood Building, room 740, Bethesda, Maryland 20892, 301–594–7865, will provide a summary of the meeting, and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: January 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2461 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behaviorial and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets on commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings to Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Keith Murray (301) 594–7145
Date of Meeting: March 17–18, 1994
Place of Meeting: Holiday Inn, Chevy Chase, MD
Time of Meeting: 9 a.m.

Meetings to Review Individual Grant Applications

Scientific Review Administrator: Dr, Joseph Kimm (301) 594–7257
Date of Meeting: March 24, 1994
Place of Meeting: Barcelo Washington Hotel, DC
Time of Meeting: 9 a.m.
Scientific Review Administrator: Dr. Peggy McCardle (301) 594–7293
Date of Meeting: February 22, 1994
Place of Meeting: Westwood Bldg, rm 305, NIH, Bethesda, MD
Time of Meeting: 1 p.m.

(Catalog of Federal Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2457 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, Notice is here given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings to Review Small business Innovation Research Program Applications

Scientific Review Administrator: Dr. Bob Weller (301) 594–7340
Date of Meeting: March 4–5, 1994
Place of Meeting: Hyatt Regency, Bethesda, MD
Time of Meeting: 8 a.m.

Meetings to Review Individual Grant Applications

Scientific Review Administrator: Dr. Lillian Pubols (301) 594–7325
Date of Meeting: February 25, 1994
Place of Meeting: Westwood Bldg, Rm306A, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 11 a.m.
Scientific Review Administrator: Dr. Bob Weller (301) 594–7340

Date of Meeting: April 15, 1994
Place of Meeting: Holiday Inn, Chevy Chase, MD
Time of Meeting: 8 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–2460 Filed 2–2–94; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS, (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, (Outside OH) 800–338–0166/(Inside OH) 800–362–8913 (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (formerly: Damon Clinical Laboratories; Chem-Bio Corporation; CBC Clinilab)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535, (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609, (moved 6/16/93)

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200, (formerly: Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142 / Outside MI: 800–225–9414, (formerly: HealthCare/Preferred Laboratories)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699–0008, 419–381–5213

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400
MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191, (formerly: MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., Bio-Analytical Technologies)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)
National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92)
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory withdrew from the Program on January 21, 1994: Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639.

The following laboratory withdrew from the Program on January 31, 1994: Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–2383 Filed 2–2–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–070–04–4410–02–P]

Extension of Public Comment Period for Scoping on an Environmental Impact Statement; Wild and Scenic River Study, Squirrel River, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of the public comment period for scoping on an Environmental Impact Statement (EIS); Wild and Scenic River Study, Squirrel River, Alaska.

SUMMARY: The Bureau of Land Management (BLM), Kobuk District Office, Alaska, is preparing an Environmental Impact Statement for the study of the Squirrel River for possible inclusion in the national wild and scenic rivers system. The Notice of Intent to proceed with the EIS was published in the **Federal Register** on December 29, 1993. Because of a delay for communities in northwestern Alaska receiving notice of the comment period for scoping on the EIS, the period for public comment is extended until 30 days from the publication of this Notice. These comments and others will be

used in preparation of a draft EIS. An additional opportunity for public comment will be held after the draft EIS is published.

The Squirrel River study was authorized by the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA, Pub. L. 96–487). The Squirrel River, a tributary of the Kobuk River in northwest Alaska, was studied in 1985 by the National Park Service (NPS) for possible inclusion in the national wild and scenic river system. After publication of a draft EIS, further action by NPS was deferred for several reasons. One of these reasons included the delegation of authority to BLM to conduct wild and scenic river studies on rivers under its management.

The proposed action in the NPS study called for designation of the federally-administered portion of the Squirrel River, plus the lower 6 miles of the river's North Fork and the lower 15 miles of the Omar River. BLM is now proceeding at the scoping level in order to obtain maximum public input on the study. Preliminary review of the draft EIS published by NPS in 1985 indicates potential issues may now include mineral development in the region, identification of transportation corridors, and subsistence lifeways in the area. Information received as a result of current scoping on this action will be used to update the NPS draft EIS and produce a new Squirrel River draft EIS.

DATES: Comments and requests to be placed on the mailing list will be accepted on or before March 7, 1994.

ADDRESSES: Comments and mailing requests should be sent to the District Manager, Kobuk District Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709–3844.

FOR FURTHER INFORMATION CONTACT: Susan Will (907) 474–2338 or Curtis Wilson (907) 272–5546.

Dated: January 27, 1994.

Helen Hankins,

Manager, Kobuk District.

[FR Doc. 94–2407 Filed 2–2–94; 8:45 am]

BILLING CODE 4310–JA–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–780810

Applicant: International Center For Gibbon Studies Santa Clarita, CA 91380

The applicant requests a permit to import one pair of captive-born moloch gibbon (*Hylobates moloch*) from Assiniboine Park Zoo, Winnipeg, Manitoba, Canada, for breeding to enhance the propagation and survival of the species.

PRT–783005

Applicant: Darrel Barton Torrance, CA

The applicant requests a permit to purchase in interstate commerce 25 juvenile captive-hatched Galapagos tortoises (Geochelone elephantopus) for the purpose of limited commercial sales to individuals within the State of California to enhance the propagation and survival of the species.

PRT–785913

Applicant: Los Angeles Zoo, Los Angeles, CA

The applicant requests a permit to export one female captive born ocelot (*Felis pardalis*) to Granby Zoo, Canada, to enhance the survival of the species through breeding.

PRT–702631, PRT–676811, PRT–704930

Applicant: U.S. Fish and Wildlife Service Regional Directors— Region 1, 2 and 6

The applicants request amendments to their current permits to include take activities for the Southwestern Willow Flycatcher (*Emidonas traillii extimus*); Region 1 also requests an amendment for the Sacramento splittail (*Pogonichthys macrolepidotus*), if and when they become Federally protected as endangered or threatened under the U.S. Endangered Species Act for the purpose of scientific research and the enhancement of propagation and survival of the species as prescribed by Service recovery documents.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 31, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–2413 Filed 2–2–94; 8:45 am]

BILLING CODE 4310–55–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

FY 1995 Title II Operational Plan and Multi-Year Operational Plan

Pursuant to the Agricultural Trade and Development Act of 1990, notice is hereby given that the Fiscal Year 1995 (FY 95) Title II Operational Plan (OP) and Multi-Year Operational Plan (MYOP) Draft Guidance is being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to review and comment on the draft guidance should contact: Office of Food for Peace, room 323, SA–8, Agency for International Development, Washington, DC 20523–0890. (703) 351–0115.

The thirty day comment period will begin on the date that this announcement is published in the **Federal Register.**

Dated: January 26, 1994.

David W. Joslyn,

Director, Office of Food for Peace, Bureau for Food and Humanitarian Assistance.

[FR Doc. 94–2364 Filed 2–2–94; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32448]

Kingwood Northern, Inc.—Acquisition and Operation Exemption—West Virginia Northern Railroad, Ltd.

Kingwood Northern, Inc. (Kingwood Northern), a noncarrier, has filed a notice of exemption to acquire and operate the entire West Virginia Northern Railroad, Ltd. The property consists of the entire line of approximately 10.7 miles, between Tunnelton and Kingwood, including all associated branch lines, in Preston County, WV. The proposed transaction was expected to be consummated on or after January 15, 1994. Kingwood Northern certified that its projected revenues do not exceed those that would qualify it as a class III carrier.

Any comments must be filed with the Commission and served on: Keith G. O'Brien, Rea, Cross & Auchincloss, 1920 N Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 28, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–2431 Filed 2–2–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Settlement and Stipulated Order Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed Settlement and Stipulated Order in *In re: Leaseway Transportation Corp., Inc.* No. 92 B 22373 (HS) (Bankr. S.D.N.Y.) was lodged on January 12, 1994, with the Bankruptcy Court for the United States District Court for the Southern District of New York. The proposed Settlement requires the debtor Anchor Motor Freight, Inc. ("Anchor"), as the subject of a claim filed under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et seq.*, to reimburse the United States $17,500.00 for certain costs incurred by the United States in connection with the Laskin/Polar Oil Superfund Site (the "Laskin Site"), located in Jefferson, Ohio.

Six prior consent decrees have been entered in connection with the Laskin Site. Through entry of the 1989 consent decree in *United States* v. *Alvin F. Laskin, et al.*, CA No. 84–2035Y (N.D. Ohio), defendants paid the United States $1.47 million as partial reimbursement for certain past costs. In 1990, the United States entered into a Remedial Design/Remedial Action consent decree with certain defendants in *United States* v. *Alvin Laskin, et al.*, CA No. 4:90CV0483 (N.D. Ohio), wherein 27 defendants became obligated to conduct the remedial action at the Laskin Site and pay, along with 131 *de minimis* defendants, certain future oversight costs and approximately $1.38 million as partial reimbursement of additional United States' past costs.

Through entry on August 27, 1993, of three consent decrees in *United States* v. *Anchor Motor Freight*, CA No. 4:89CV1999 (N.D. Ohio), ten defendants paid the United States approximately $2.7 million as partial reimbursement for certain costs. Through entry on November 16, 1993, of the sixth consent decree for this site, five defendants in the *Anchor Motor Freight* case paid the United States approximately $1.4 million as partial reimbursement for certain costs.

Anchor did not sign the first decree entered in connection with the Laskin/Poplar Oil Site, nor any of the consent decrees entered in the *Anchor Motor Freight* case. The proposed Settlement reimburses the United States for certain money expended but not reimbursed through entry of any consent decree for the Laskin/Poplar Oil site.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC., 20530, and should refer to *In re: Leaseway Transportation Corp., Inc.* and DOJ Ref. No. 90–11–3–38C.

The proposed Settlement may be examined at the office of the United States Attorney, 100 Church Street, 19th Floor, New York, New York 10007; the Region 5 Office of U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois, 60604–3590; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, (202) 624–0892. Copies of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of a consent decree, please identify which consent decree is sought and enclose a check in the amount of $4.25 for the consent decree (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–2363 Filed 2–2–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act, 33 U.S.C. 1251 et seq.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed modification to a consent decree in *United States* v. *City of Wheelwright, Kentucky and the Commonwealth of Kentucky*, Civil Action No. 88–436, was lodged on December 30, 1993 with the United States District Court for the Eastern District of Kentucky. The proposed modification will make changes to Section III of the decree (Remedial Actions) by modifying the schedule of construction of an agreed upon new waste water treatment facility for the City, and add a new penalty to be paid by the City in the amount of $4,000 to cover violations of the decree from entry of the decree to the entry of the proposed modification.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modification to the consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Wheelwright and the Commonwealth of Kentucky*, DOJ Ref. #90–5–1–1–2946A. The proposed consent decree and entered consent decree may be examined at the office of the United States Attorney, 110 W. Vine St., suite 400, Lexington 40507; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 2005, (202) 624–0892. A copy of the proposed modification and the filed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–2362 Filed 2–2–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish Agency recordkeeping/

reporting requirements under review by the Office of Management and Budget (OMB) since the last publication. These entries may include new collections, revisions, extensions, or reinstatements, if applicable. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements included in each notice may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items included in each notice should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ ETA/OLMS/MSHA/ OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Bureau of Labor Statistics

Pricing Collective Bargaining Settlements—Private Sector
Other—upon reaching a new collective bargaining agreement, which is about once every 3 years on average
Businesses or other for-profit
396 respondents; 35.1 min. per response; 232 total hours; 2 forms The Bureau of Labor Statistics will use the information collected in Pricing Collective Bargaining Settlements to compile quarterly measures of collective bargaining settlements. As a primary Federal economic indicator, the measure is used by Federal policymakers to help set economic policy. In addition, company officials and labor groups request the data for collective bargaining negotiations and researchers use the data for compensation and unionization analyses.

Revision

Pension and Welfare Benefits Administration
Annual Report/Form 5500 Series
1210–0016; Form 5500
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
832,000 respondents; 1.2 hours per response; 998,400 total hours
Section 104(a) of the Employee Retirement Income Security Act (ERISA) requires plan administrators to file an annual report containing the information described in section 103 of ERISA. The Form 5500 Series provides a standard format for fulfilling that requirement.

Extension

Employment Standards Administration
Agreement and Undertaking
1215–0034; OWCP–1
On occasion
Businesses or other for-profit
300 respondents; .25 hours per response; 75 total hours; 1 form
The Office of Workers Compensation Programs (OWCP) OWCP–1 is a joint use form (Longshore and Black Lung programs) completed by employers to provide the Secretary of Labor with authorization to sell securities, or to bring suit under indemnity bonds deposited by the self-insured employers in the event there is a default in the payment of benefits.

Extension

Employment and Training Administration
Preliminary Estimates of Average Employer Tax Rates
1205–0228; ETA 205
Annually
State or local governments
53 respondents; 16 minutes per response; 14 total hours; 1 form The average rate collected from States is used to compare average tax rates among the States by the Employment and Training Administration and State agencies, and along with the current tax rate schedule, is used to certify that a State is complying with the law.

Revision

Employment and Training Administration
Job Training Partnership Act (JTPA) Title III Biennial State Plan
1205–0273
Biennially
State or local governments
53 respondents; 20 hours per response; 1,060 total hours.
The State plan will provide the Department of Labor with a general description of each State's plans for the operation of the Title III program and its utilization of JTPA funds for this purpose.

Revision

Bureau of Labor Statistics

Standard Industrial Classification (SIC) Forms 1220–0032

Form No.	Affected public	Respondents	Frequency	Average time per response (hours)
BLS 3023VS	Service Industries	1,630,815	Every 3 years	.083
BLS 3023VM	Service Industries	106,146	Every 3 years	.25
BLS 3023CA	All Industries	45,359	Every 3 years	.167
BLS 3023V	Service Industries	121,940	Every 3 years	.083
Total hrs				179,591

Accurate industrial coding based on the 1987 Standard Industrial Classification Manual is needed by many Federal, State, and local government officials and private researchers. This extension will permit

the use of previously approved forms to gather this information.

Extension

Mine Safety and Health Administration
Gamma Radiation Exposure Records
1219–0039
Quarterly
Operators of metal and nonmetal underground mines
5 respondents; 4 hours per response; 80 total burden hours
Requires operators of metal and nonmetal underground mines, where radioactive ores are mined, to keep records of the results of annual gamma radiation surveys and individual miner's cumulative gamma radiation exposure.

Signed at Washington, D.C. this 27th day of January, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–2420 Filed 2–2–94; 8:45 am]

BILLING CODE 4510–24–P; 4510–30–P

Bureau of Labor Statistics

Review of the Labor Market Information System

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, through the Bureau of Labor Statistics, is conducting a review of the federal-state labor market information system. The Department is seeking comments at this time so that the interested public may be involved in the review.

DATES: Comments must be received on or before March 4, 1994. The report from this review is to be submitted to Congress on or before May 1, 1994.

ADDRESSES: Send written comments to Milton L. Martin, Project Director, Labor Information Systems, 148 International Boulevard NE., Atlanta, GA 30303–1751.

FOR FURTHER INFORMATION CONTACT: Milton L. Martin, Project Director. Telephone 404–656–3177.

SUPPLEMENTARY INFORMATION: At the request of Congress, the Department of Labor is conducting a review of the federal-state labor market information system. This notice requests comments from interested persons and organizations. The labor market information system is a cooperative effort involving the Department of Labor, state employment security agencies and other federal and state organizations. With federal funding and assistance, state agencies gather and disseminate information on employment, unemployment, the labor force, labor market trends, and job opportunities.

The review will address user needs, legislative mandates, funding, coordination and management of the system, and the reliability of state and local labor force estimates. The review will also include proposals regarding overall policy and the future direction of the labor market information system.

Signed at Washington, DC, this 27th day of January, 1994.

Thomas J. Plewes,

Associate Commissioner for Employment and Unemployment Statistics, Bureau of Labor Statistics.

[FR Doc. 94–2424 Filed 2–2–94; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–29,225]

Grove Communications, MGM Tower, Inc., Grove Company, Inc., Williston, ND; Termnation of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 15, 1993, in response to a worker petition which was filed on November 15, 1993, on behalf of workers at Grove Communications, MGM Tower, Inc., and Grove Company, Inc., Williston, North Dakota.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 25th day of January, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–2421 Filed 2–2–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 14, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of January, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Paxar Corp, Woven Label Group (Wkrs).	Troy, PA	01/10/94	12/19/93	29,381	Garment labels.
Coordinated Apparel Group, Inc (Co)	Metter, GA	01/10/94	12/20/93	29,382	Ladies', children's and men's outerwear.

APPENDIX—Continued

Petitioner: union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Aspen Imaging International (Wkrs)	Lafayette, CO	01/10/94	1/04/94	29,383	Computer printer ribbons, toner etc.
Reynolds Metals (USWA)	Troutdale, OR	01/10/94	12/29/93	29,384	Aluminum ingot.
O'Donnell-Usen Fisheries (Wkrs)	Gloucester, MA	01/10/94	12/27/93	29,385	Fish products.
Reynolds Metals Co. (USWA)	Torrance, CA	01/10/94	12/22/93	29,386	Aluminum extrusions.
London Fog Industries (ACTWU)	Baltimore, MD	01/10/94	12/23/93	29,387	Ladies' and men's rainwear.
Cyprus Miami Mining Corp (Wkrs)	Claypool, AZ	01/10/94	12/07/93	29,388	Cooper.
Aeroscientific Corp (Co)	Beaverton, OR	01/10/94	12/29/93	29,389	Printed circuit boards.
A.J. Electronics, Inc (Co)	Chatsworth, CA	01/10/94	12/29/93	29,390	Assembled components on printed circuit board.
Teledyne Controls (Wkrs)	Los Angeles, CA	01/10/94	12/17/93	29,391	Flight control Data System.
Primrose Bedspread Corp (Co)	Passaic, NJ	01/10/94	12/22/93	29,392	Comforters, sheet sets, shams, etc.
Clifton Comforter Corp (Co)	Passaic, NJ	01/10/94	12/22/93	29,393	Comforters, sheet sets, shams, etc.
Martin Marietta Corp (Co)	Syracuse, NY	01/10/94	12/20/93	29,394	Overhead display systems.
London Fog Industries (ACTWU)	Portsmouth, VA	01/10/94	12/23/93	29,395	Ladies' and men's rainwear.
London Fog Industries (ACTWU)	Boonsboro, MD	01/10/94	12/23/93	29,396	Ladies' and men's rainwear.

[FR Doc. 94-2422 Filed 2-2-94; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,062; SPS Technologies, Santa Ana, CA

TA-W-29,182; Fiber Material Inc., Biddeford, ME

TA-W-29,116; Penick Corp., Newark, NJ

TA-W-29,104; Electrode Corp., Chardon, OH

TA-W-29,102; Hansome Energy Systems, Inc., Linden, NJ

TA-W-29,185; Library Bureau, Inc., Herkimer, NY

TA-W-29,127; Jefferson Smurfit Corp., Container Div., New Hartford, NY

TA-W-29,203; Rockwell International's Space Systems Div., Seal Beach, CA

TA-W-28,897; Moore Business Forms, Inc., Salem, OR

TA-W-29,139; McCabe Group, McCabe Machine Products, Claysburg, PA

TA-W-29,251; Jefferson City Zinc, Jefferson City, TN

TA-W-29,221; Paris Sewing, Inc., Paris, TX

TA-W-29,101; Heintz Corp., Philadelphia, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-29,263; Farmland Industries, Inc., Grain Div., Enid, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,106; American Telephone & Telegraph, 9595 Mansfield Rd., Shreveport, LA

Sales, production and employment increased in 1992 compared with 1991.

TA-W-29,134; Utopia Spring Water, Houston, TX

The investigation revealed that the subject firm, Utopia Spring Water, Houston, TX, was purchased by another domestic firm in the spring of 1993. When support functions were consolidated at an affiliated domestic facility the subject workers were laid off.

TA-W-29,256; Fruehauf Corp., Delphos Parts Plant, Delphos, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,006; TRW, Inc., Defense Support Programs, Redondo Beach, CA

Predominant reason for layoffs at Spacecraft Technology Div., Defense Support Program, Redondo Beach, CA was a decision by its only customer to delay the schedule and delivery of the satellites produced by the subject firm.

TA-W-29,201; Essex Specialty Products, Sayreville, NJ

Essex Specialty Products, Sayreville, NJ revealed company production and sales of polyurethane and adhesives increased during 1992 compared to 1991 and increased during the first nine months of 1993 compared to the same period of 1992.

TA-W-29,226; DSC Communications Corp., El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,319; Koch Gathering Systems, Inc., Duncan, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,163; Allsteel, Inc., Aurora, IL

Corporate decision was made to consolidate operations transferring production from the subject firm to another domestic facility.

TA-W-29,164; GE Specialty Component Manufacturing Center, Seattle, WA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-29,198; Good Quality Sewing Co., Honesdale, PA

A certification was issued covering all workers separated on or after October 28, 1992.

TA-W-29,248; Hillsdie Sportswear, Shamokin, PA

A certification was issued covering all workers separated on or after November 8, 1992.

TA-W-29,190; Exploration employment Service, Inc., Livingston, TX

A certification was issued covering all workers separated on or after October 22, 1992.

TA-W-29,285; U.S. Ring Binder Corp., New Bedford, MA

A certification was issued covering all workers separated on or after November 16, 1993.

TA-W-29,131; Eaton Corp., Athens, AL

A certification was issued covering all workers separated on or after August 27, 1992.

TA-W-29,233; J.C. and Me, Holsopple, PA

A certification was issued covering all workers separated on or after November 10, 1992.

TA-W-29,168; U.S. Vanadium Corp., Niagara Falls, NY

A certification was issued covering all workers separated on or after October 15, 1992.

TA-W-29,297; L & M Fashions, Inc., Hialeah, FL

A certification was issued covering all workers separated on or after November 9, 1992.

TA-W-29,211; Mallinckrodt Medical, Inc., New Haven, MO

A certification was issued covering all workers separated on or after November 1, 1992.

TA-W-29,274; Wundies Enterprises, Inc., Williamsport, PA

A certification was issued covering all workers separated on or after November 17, 1992.

TA-W-29,376; Encore Shoe Corp., Rochester, NH

A certification was issued covering all workers separated on or after September 1, 1992.

TA-W-29,215; Cooper Industries, Wagner Brake Div., Hilliard, OH

A certification was issued covering all workers separated on or after September 27, 1992.

TA-W-29,041; Seagate Technology, Oklahoma City, OK

A certification was issued covering all workers separated on or after August 30, 1992.

TA-W-29,322; Dudley Sports Div., of Spalding & Evenflo Companies, Inc., Sellersville, PA

A certification was issued covering all workers separated on or after November 11, 1992.

TA-W-29,228; Ditto Apparel of California, Inc., Leesville, LA

A certification was issued covering all workers separated on or after November 3, 1992.

TA-W-29,229, TA-W-29,230, TA-W-29,232; Ditto Apparel of California, Inc., Colfax, Bastrop, and Oak Grove, LA

A certification was issued covering all workers separated on or after November 2, 1992.

TA-W-29,105; Custom Resins Div., Bemis Co., Inc., Henderson, KY

A certification was issued covering all workers separated on or after September 29, 1992.

I hereby certify that the aforementioned determinations were issued during the month of January, 1994. Copies of these determinations are available for inspection room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 24, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-2423 Filed 2-2-94; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: Reactor Operator and Senior Reactor Operator Licensing Training and Requalification Programs.
3. The form number if applicable: N/A.
4. How often the collection is required: Upon request by the NRC.
5. Who will be required or asked to report: Power and non-power reactor licensees.
6. An estimate of the number of annual responses: 8 for power reactors and 4 for non-power reactors.
7. An estimate of the total number of hours needed to complete the requirement or request: 32 hours annually for power reactors (approximately 4 hours per response) and 2 hours annually for non-power reactors (approximately 0.5 hours per response). There is an overall reduction of 358 hours (3.3 hours per licensee) because licensees will no longer submit material for NRC preparation of requalification examinations.
8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.
9. Abstract: The Nuclear Regulatory Commission (NRC) is amending its regulations at 10 CFR part 55 to: (1) Delete the prerequisite for license renewal that each licensed operator pass a comprehensive requalification written examination and an operating test conducted by the NRC during the term of the operator's 6-year license, (2) require facility licensees to submit upon request copies of each annual operating test or comprehensive written examination used for operator requalification to the NRC for review, and (3) amend the "Scope" provisions of the regulations pertaining to operators' licenses to include facility licensees. This information is needed to monitor licensed operator performance and to support the Commission's inspection program. It is concluded that these amendments will result in a substantial increase in the overall protection of public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150-0018 and 3150-0101), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al.; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-44 and DPR-56, issued to the

Philadelphia Electric Company, et al. (the licensee), for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Summary of Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of changes to the Peach Bottom Atomic Power Station, Units 2 and 3, operating licenses DPR–44 and DPR–56, respectively, to extend the expiration dates of the operating licenses from January 31, 2008 to August 8, 2013 and July 2, 2014, respectively. The amendments are in response to the licensee's application dated May 21, 1992. The revised dates provide for a licensed operating period of 40 years from issuance of the respective unit operating license. The Commission's staff has prepared an environment assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Related to the Change in the Expiration Date of Facility Operating Licenses DPR–44 and DPR–56, Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company, Peach Bottom Atomic Power Station, Units 2 and 3," dated January 24, 1994.

The NRC staff has reviewed the potential environmental impact of the proposed change in the expiration dates of the operating licenses for Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom, Units 2 and 3). The staff reviewed the "Final Environmental Statement Related to Operation of Peach Bottom Atomic Power Station Units 2 and 3," dated April 1973 (FES) and the information provided in the licensee's May 21, 1992 license amendment application to determine if any significant environmental impacts, other than those previously considered, would be associated with the proposed license extension.

Radiological Impact

The NRC staff concludes that, although the population in the vicinity of Peach Bottom Atomic Power Station has increased, the population growth was less than projections provided in the FES. Based on updated census information and updated population growth estimates, the existing FES is expected to remain bounding with respect to population projections.

Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding "as low as reasonably achievable" (ALARA) limits and are expected to remain within ALARA limits. Based on the continued operation of existing liquid and gaseous radwaste treatment systems coupled with the current radiological monitoring program, the NRC staff anticipates liquid and gaseous effluent doses during the period covered by the requested amendment will remain a fraction of the 10 CFR part 50, Appendix I, limits and will not adversely impact the environment.

With regard to normal plant operation, occupational radiation exposures to personnel have decreased as a result of recent plant improvements. Further reductions in radiation dose rates are expected as a result of the ALARA program.

Accordingly, the NRC staff concludes that, as a result of the license extension, the radiological impact on the general public would not increase over that previously evaluated in the FES and the occupational exposure will be at least consistent with the industry average and in accordance with 10 CFR Part 20.

The NRC staff has in the past concluded that the environmental impacts associated with the uranium fuel cycle are very small when compared with the dose commitments resulting from natural background sources.

The environmental impacts attributable to transportation of fuel and waste to and from Peach Bottom Atomic Power Station, with respect to normal conditions of transport and possible accidents in transport, would be founded as set forth in Summary Table S–4 of 10 CFR 51.52. The values in Table S–4 would continue to represent the contribution of transportation to the environmental costs associated with reactor operation.

Nonradiological Impacts

The NRC staff has concluded that the proposed extension would not cause a significant increase in the nonradiological impact to the environment and would not change any conclusions previously reached by the NRC staff.

Alternate Use of Resources

This action does not involve the use of resources not previously considered in the FES.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and contacted the Commonwealth of Pennsylvania, Bureau of Radiation Protection, which had no objection to the proposed license extension.

Finding of No Significant Impact

The NRC staff has reviewed the proposed change to the expiration dates of the Peach Bottom Atomic Power Station, Units 2 and 3 operating licenses relative to the requirements set forth in 10 CFR part 51. Based on the environmental assessment, the Commission concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The application for amendment dated May 21, 1992; (2) the "Final Environmental Statement Related to Operation of Peach Bottom Power Station, Units 2 and 3," issued April 1973; and (3) the Environmental Assessment dated January 24, 1994.

These documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the State Library of Pennsylvania, (Regional Depository) Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania, 17105.

Dated at Rockville, Maryland, this 24th day of January 1994.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–2392 Filed 2–2–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 10–12, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on December 23, 1993.

Thursday, February 10, 1994

8:30 a.m.–8:35 a.m.: Opening Remarks by ACRS Chairman (Open)—

The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:05 a.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss matters scheduled for discussion during its meeting with the NRC Commissioners.

9:30 a.m.–11 a.m.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, to discuss matters of mutual interest.

12:45 p.m.–2:15 p.m.: Advanced Light-Water Reactor Policy Issue—Source Term (Open)—The Committee will review and comment on a draft Commission paper related to the source term to be used for Advanced Light-Water Reactors. Representatives of the NRC staff will participate.

2:15 p.m.–3:45 p.m.: Protection Against Malevolent Use of Vehicles at Nuclear Power Plants (Open/Closed)—The Committee will review and comment on the proposed final rule on Protection Against Malevolent Use of Vehicles at Nuclear Power Plants, including comments by NUMARC and the associated NRC staff resolution. Representatives of the NRC staff and NUMARC will participate.

A portion of this session may be closed to discuss safeguards and security information.

4 p.m.–5 p.m.—Proposed NRC Staff Plan to Implement the Recommendations of the PRA Working Group and the Regulatory Review Group (Open)—The Committee will review and comment on the proposed NRC staff plan to implement the recommendations of the PRA Working Group and the PRA-related recommendations of the Regulatory Review Group. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

5 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on diversity, the Reliability Assurance Program for the Advanced Light-Water Reactors (ALWRs), NRC staff's proposed use of TIER 2 material for certification of ALWRs, and Technical Specification Requirements for Onsite Power Sources for Evolutionary Plant Designs; and on other matters considered during this meeting.

Friday, February 11, 1994

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–9:45 a.m.: Management Perspective Regarding ABWR Review (Open)—The Committee will hear briefings by and hold discussions with Dr. Murley, Director of the Office of Nuclear Reactor Regulation, and Senior Managers of the General Electric Nuclear Energy regarding the status of the NRC staff review of the ABWR design.

9:45 a.m.–11:45 a.m.: Advanced Boiling Water Reactor Design (Open)—The Committee will hear briefings by and hold discussions with representatives of the NRC staff regarding the Final Design Approval for the ABWR. Representatives of the General Electric Nuclear Energy will participate, as appropriate.

12:45 p.m.–2:15 p.m.: Rod Control System Failure and Withdrawal of Rod Control Cluster Assemblies (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding: the May 27, 1993 event at Salem, Unit 2 during which a single failure in the rod control system resulted in the withdrawal of a single rod from the core while the operator was applying a rod insertion signal; a similar event at the Ginna nuclear power plant; and licensees' responses to Generic Letter 93–04, "Rod Control System Failure and Withdrawal of Rod Control Cluster Assemblies," dated June 21, 1993. Representatives of the industry will participate, as appropriate.

2:30 p.m.–3 p.m.: Annual ACRS Report to Congress (Open)—The Committee will discuss a draft of the Annual ACRS Report to the Congress on the NRC Safety Research Program.

3 p.m.–3:45 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, qualifications of candidates nominated for appointment to the ACRS, and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory Committee, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

3:45 p.m.–4:30 p.m.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

4:45 a.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Saturday, February 12, 1994

8:30 a.m.–12 Noon: Preparation of ACRS Reports (Open)—The Committee will complete its reports on matters considered during this meeting.

12 Noon–12:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

12:15 p.m.–12:45 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding the status of ACRS subcommittee activities, including a report of the February 9, 1994 meeting of the ABB–CE Standard Plant Designs Subcommittee.

12:45 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings at time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting,

persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss safeguards and security information exempted from disclosure by a statute that established particular criteria for withholding or refers to particular types of matters to be withheld per 5 U.S.C. 552(c)(3), to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552(c)(2), and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. est.

Dated: January 28, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–2382 Filed 2–2–94; 8:45 am]

BILLING CODE 7590–01–M

Use of Decommissioning Trust Funds Before Decommissioning Plan Approval; Draft Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft policy statement.

SUMMARY: This draft policy statement presents the criteria the U.S. Nuclear Regulatory Commission (NRC) proposes to follow in addressing requests from power reactor licensees that have permanently shut down their power reactors to make withdrawals from external decommissioning sinking funds to pay for the removal of components and other decommissioning-related activities before the NRC approves these licensees' decommissioning plans submitted pursuant to 10 CFR 50.82. This draft policy statement also covers *de minimis* withdrawals from external decommissioning sinking funds to pay for developing the 10 CFR 50.82 decommissioning plan and for other post-shutdown administrative expenses.

DATE: Comment period expires April 19, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504–1255.

SUPPLEMENTARY INFORMATION:

Background

The NRC decommissioning regulations in 10 CFR 50.75 and 50.82 are silent on whether approval of the decommissioning plan must precede withdrawals from the decommissioning trust fund. Appendix B.3.1, p. B–12 of Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," contains sample trust language that indicates that the fund trustee should only release funds upon certification "that decommissioning is proceeding pursuant to an NRC-approved plan." However, not all licensees have used this sample language. When the NRC evaluated trust funds as part of the initial certification required by 10 CFR 50.75(b) and submitted in July 1990, it found trusts acceptable if, along with other provisions, they contained language limiting trust fund withdrawals to legitimate decommissioning purposes. Thus, many licensees have acceptable trusts that nevertheless do not expressly limit the withdrawal of trust funds before NRC approves a decommissioning plan.

Because of a request by Yankee Atomic Electric Company (YAEC)[1] and in anticipation of future requests by other power reactor licensees of permanently shutdown facilities, the Commission directed the NRC staff to provide an analysis and recommendation to the Commission on permitting licensees to use their decommissioning funds for decommissioning activities prior to approval of the decommissioning plans. The Commission approved the criteria developed by the staff to evaluate early withdrawals from external decommissioning sinking funds and directed the staff to publish the details of this policy in the **Federal Register** for information and public comment.[2] This proposed policy and implementing criteria are provided below:

Statement of Policy

If a licensee of a permanently shutdown facility spends decomissioning trust funds on legitimate decommissioning activities, the timing of these expenditures, either before or after NRC approves a licensee's decommissioning plan, should not adversely affect public health and safety, provided adequate funds are maintained to restore the facility to a safe storage configuration in case decommissioning activities are interrupted unexpectedly. Consequently, the timing of the NRC review of a licensee's decommissioning plan in relation to withdrawals from trust funds is not as important as the purpose of those withdrawals.

In its decommissioning plan reviews, the NRC evaluates proposed licensee activities in the planned decommissioning process to determine whether the proposed plan adequately ensures protection of public health and safety. The NRC will also assess a licensee's overall decommissioning fund balance in relation to total cost. The NRC review of decommissioning costs is focused on seeing that they fall within a normal range of costs and is not focused on examining the timing, scope, and cost of specific component removal or other decommissioning activities. Therefore, although the NRC believes that it should guard against misuse or waste of decommissioning trust funds by licensees, it is not clear that prior NRC review of the decommissioning plan would identify such misuse or waste unless it resulted in costs far higher than would normally be expected. The NRC would find it difficult to identify the misuse of funds if a licensee's estimates were within a reasonable range of the costs estimated for similar facilities. Further, the NRC does not supervise or review the actual

[1] In a letter to the Commission dated November 25, 1992, YAEC stated its intention to use its decommissioning trust funds to remove reactor core internals, steam generators and the pressurizer from Yankee-Rowe before the NRC approves YAEC's decommissioning plan. (YAEC plans to submit its decommissioning plan for NRC review in late 1993.) By letter dated April 16, 1993, the NRC did not object to YAEC's proposed use of decommissioning trust funds before NRC approval of the Yankee-Rowe decommissioning plan, using criteria consistent with those discussed in this policy statement.

[2] This policy statement does not apply to licensees with operating nuclear reactors. The staff is separately evaluating the issue of whether and under what circumstances the NRC should allow licensees of operating plants to withdraw decommissioning trust funds.

expenditure of funds during decommissioning and would not have an opportunity to identify serious cost overruns that might jeopardize the adequacy of funding available for remaining decommissioning activities.

However, there appears to be little motivation for utilities to misuse these funds. Most NRC power reactor licensees are subject to rate regulation by State public utility commissions (PUCs) or the Federal Energy Regulatory Commission (FERC). Utilities are normally allowed to earn a return on assets, including nuclear plants, once they are determined to be "used and useful" and placed in the rate base. Decommissioning costs, however, are normally treated by PUCs and FERC as non-rate-base expenses. They are passed on to ratepayers as expenses, but the utility and its stockholders do not earn a return on these collections. Consequently, there is little financial incentive for a licensee to "pad" or dissipate collected decommissioning funds to increase the rate base, because the stockholders would not benefit.

Further, PUCs and FERC are unlikely to allow utilities under their jurisdictions to squander funds obtained from ratepayers. Rate regulators hold prudency reviews to determine whether utilities have spent funds properly throughout all aspects of plant operation, from initial planning to final decommissioning. The NRC expects that PUCs and FERC will continue to exercise their oversight of utilities' expenditures, including those being paid from decommissioning trust funds, throughout the decommissioning process. A utility has an incentive to spend decommissioning funds prudently if it knows that its stockholders will be liable for decommissioning costs in excess of those already collected from ratepayers.

Although NRC approval of the decommissioning plan does not ensure prevention of misuse or waste of decomissioning funds, the NRC believes that withdrawal of funds for decommissioning activities before a decommissioning plan is developed and approved should require NRC review. This is consistent with Commission guidance which provided that the staff may permit licensees to use their decommissioning funds for the decommissioning permitted above (as the term decommission is defined in 10 CFR 50.2), notwithstanding the fact that their decommissioning plans have not yet been approved by the NRC.

Criteria

The criteria and supporting rationale developed to evaluate licensee proposals for early withdrawals from external decommissioning sinking funds are as follows:

1. The withdrawals are for expenses for legitimate decommissioning activities as defined in 10 CFR 50.2 that would necessarily occur under most reasonable decommissioning scenarios. Section 10 CFR 50.2 defines "decommission" as meaning "to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of licensee."

This criterion calls for a licensee to demonstrate that the early withdrawal is for activities that would occur under reasonable decommissioning scenarios and would prevent funds being used for activities that do not reduce radioactivity at the site and ultimately permit release of the property for unrestricted use. A licensee that has already prepared its § 50.82 decommissioning plan (which must be submitted within 2 years after a permanent cessation of operations) could reference the appropriate part of this plan. A licensee that has not yet completed its § 50.82 decommissioning plan would have to provide other documentation to demonstrate that its proposed activities were clearly decommissioning activities.

2. The expenditures would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the licensee's reactor in a safe storage (SAFSTOR) condition if unforeseen conditions or expenses arise. (For example, if the waste shipments were rejected by the disposal site because of lack of storage space or legal impediments, a licensee would have to show it had the funds to return and store any affected components on site and to store any radioactive components and materials that had remained on-site.)

Consistent with the purpose of the decommissioning funding regulations, assurance of availability of funds to safely decommission a facility, and the principle that a preapproval activity does not foreclose the release of the site for possible unrestricted use, this criterion calls for a licensee to show that it can maintain the status quo at a facility and that the proposed activities will not preclude the ultimate unrestricted use of the site. A licensee would have to document the rationale for the minimum amount estimated to be needed to return to a safe storage condition if decontamination or removal activities are interrupted and the components and equipment involved have to be stored safely at the site. Such on-site storage after shipment could, in the worst case, require construction of a storage facility. This criterion ensures that decommissioning activities that occur before approval of the § 50.82 decommissioning plan do not reduce funds below a level that would ensure continued maintenance of safety at a defueled, shutdown facility until the decommissioning plan is reviewed and approved. A licensee could satisfy this criterion by demonstrating that it has sufficient funds in either its decommissioning fund or other available funds to maintain the status quo at the facility, that is, maintain safety in the defueled, shutdown condition. It should be noted that this criterion is also pertinent to the normal, end-of-life decommissioning; licensees are to accommodate the possibility of unforeseen occurrences by providing for contingencies. (See Regulatory Guide 1.159 at 1.159–10, Item 1.4.4.3. The general guidance of Regulatory Guide 1.159 concerning provisions for "contingencies," however, does not explicitly identify the nature of such contingencies. The NRC's proposed criterion is more explicit.)

The NRC notes that 10 CFR 50.82(c)(1) requires that, "funds needed to complete decommissioning be placed into an account segregated from licensee assets and outside the licensee's administrative control during the storage or surveillance period, or a surety method or fund statement of intent be maintained in accordance with the criteria of § 50.75(e)." Because the definition of decommissioning in 10 CFR 50.2 implicitly includes the costs of placing and maintaining a reactor in safe storage, a licensee should continue to provide assurance of adequate funds for these expenses at all times during the SAFSTOR period. Thus, licensees are required to maintain this assurance both before and after the NRC approves a licensee's § 50.82 decommissioning plan.

3. The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure availability of funds to ultimately release the site for unrestricted use.

This criterion encompasses the principle that activities allowed before approval of the decommissioning plan do not significantly increase decommissioning costs. A licensee would be required to document the effect of the withdrawals on the decommissioning funding plan, addressing the current fund balance and collection schedule, and demonstrate that the use of funds before NRC approval of a decommissioning plan for

the facility would not impair the licensee's ability to fully fund the plan submitted to the NRC (or, if no plan has been filed, the actions necessary to permit release of the site for unrestricted use). A licensee would, for example, have to show that the decommissioning actions potentially taken out of sequence of any decommissioning plan submitted (or reasonable decommissioning alternatives if no plan has been submitted) would not significantly increase decommissioning costs or impair its ability to obtain the funds necessary to complete decommissioning.

4. Before the NRC approves a decommissioning plan, licensees can be allowed to undertake any decommissioning activity (as the term "decommission" is defined in 10 CFR 50.2) that does not: (a) Foreclose the release of the site for possible unrestricted use, (b) significantly increase decommissioning costs, (c) cause any significant environmental impact not previously reviewed, or (d) violate the terms of the licensee's existing license (e.g., OL, POL, or OL with confirmatory shutdown order) or 10 CFR 50.59 as applied to the existing license.

This criterion seeks to ensure that funds are only used for those decommissioning activities that would be allowed to proceed before the NRC approves a decommissioning plan. Items (a) and (b) have already been addressed by this policy statement. For items (c) and (d), a licensee and the NRC would evaluate the proposed activity to ensure that the activity may proceed under the current license and that the proposed activity will not result in any significant environmental impact not previously reviewed.

As stated above, the NRC may permit licensees to use their decommissioning funds for the decommissioning activities permitted above (as the term "decommission" is defined in 10 CFR 50.2), notwithstanding the fact that their decommissioning plans have not yet been approved by the NRC. After review of the licensee's proposed activities and fund withdrawal using the above criteria, the NRC would permit the licensee to use decommissioning funds and to undertake the proposed activities by tacitly consenting to the proposed withdrawals by not interposing, within a specified time, an objection to the licensee's proposal. The NRC would need 60 days to complete an effective review of a licensee's proposal and justification of how the above criteria will be met.

Ancillary Issue

In the past, licensees have asked the NRC informally whether they would be able to withdraw funds from their trusts to pay for developing the § 50.82 decommissioning plan and for other post-shutdown administrative expenses. The NRC believes that these withdrawals should be allowed before the NRC approves the final decommissioning plan, provided the licensee meets the following guidelines:

1. The sum of withdrawals for such purposes should be *de minimis*, that is, less than $5 million.[3]
2. The decommissioning trust balance would not fall below an amount needed for safe storage.
3. The licensee provided for these costs in its site-specific decommissioning cost estimate and increased its overall trust fund balances accordingly.

Dated at Rockville, Maryland, this 12th day of January, 1994.

For the Nuclear Regulatory Commission.

James L. Blaha,

Acting Executive Director for Operations.

[FR Doc. 94–2391 Filed 2–2–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33533; File No. SR–NASD–94–5]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Application Fees for New Members

January 27, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 21, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to Schedule A to the By-Laws to amend the amount of new application fees assessed against firms other than self-clearing or introduction firms, from $1,500 to $3,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article VI of the By-Laws of the NASD requires new members to pay an application fee based on reasonable expenses incurred in carrying out the work of processing new membership applications. Pursuant to Schedule A, Section 2 to the By-Laws, the NASD currently assesses a new application fee of $5,000 for self-clearing firms, $3,000 for introducing firms and $1,500 for all firms other than self-clearing or introducing firms ("other" firms).[1] The average cost of processing new applications for other firms exceeds the revenue generated by the fee for such applications. Currently, the NASD subsidizes the revenue shortfall for other firms from other fees and assessments.

Because there is no reasonable justification for subsidizing the initial entry of other firms into the industry, the NASD is proposing to amend the application fee assessed against other firms to reflect more closely the actual costs incurred in processing such applications. The average cost for processing new applications for other firms is approximately the same as that for introducing firms. Therefore, the NASD is proposing to amend the

[3] In talking informally with several licensees, the NRC understands that most licensees expect to spend from $1 million to $3 million for completing decommissioning plans and for immediate post-shutdown administrative expenses. The amount of $5 million, therefore, is based on a "best-guess" estimated, but is small enough not to significantly deplete the decommissioning trust.

[1] NASD Manual, Schedule A to the By-Laws, Sec. 2, (CCH) ¶ 1753.

amount of the new application fee assessed against other firms in Schedule A, Section 2(i)(iii), which is currently $1,500, to $3,000.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[2] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members in that the proposed rule change equitably adjusts the initial application fee so that all new members are assessed their approximate entry costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and Rule 19b–4 promulgated thereunder in that it constitutes a due, fee, or other charge.

At any time within 60 days of the filing of a rule change, the Commission may summarily abrogate the rule change pursuant to Section 19(b)(3)(C) of the Act if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–2373 Filed 2–2–94; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78*o*–3 (1988).

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

Low Earth Orbit Space Market; Public Meeting

Notice is hereby given of a public meeting called by the Department of Transportation's (DOT) Office of Commercial Space Transportation (OCST) to obtain data specifically relating to the low earth orbit (LEO) space market. The meeting is scheduled to take place on February 10, 1994, from 3–5 p.m., in the FAA Auditorium, located on the third floor of the Department of Transportation's Federal Aviation Administration Building, 800 Independence Ave., SW., Washington, DC. The information obtained from this meeting will facilitate DOT's participation as a member of the Interagency Working Groups on Space Transportation for the White House Office of Science and Technology Policy (OSTP) and on the Department of Defense Space Launch Modernization Plan. DOT is also supporting efforts by the Office of the United States Trade Representative (USTR) to monitor compliance by the Russian Federation with the recently concluded U.S.-Russia commercial space launch trade agreement.

OCST seeks data that would assist in defining LEO launch requirements and in projecting future space transportation needs to support market demands. Specifically, OCST is interested in obtaining LEO market projections, including the number of payloads planned for launch between the years 1994–2010, and thereafter, and the kinds of services that may be provided by LEO satellites and their applications (e.g., remote sensing, mobile communications). OCST is also interested in obtaining long-range projections of the potential revenues that may be generated by these space-based systems. Information on short-term (within the next 1–5 years) revenue projections should not be provided at the meeting unless it is otherwise publicly available. Interested parties wishing to provide short-range revenue projections not otherwise publicly available may do so in a written submission to OCST. This information will not be publicly disclosed by OCST except in aggregate form.

Written submissions may be provided to OCST in addition to or in place of oral remarks presented at the public meeting. Submissions designated as proprietary will be treated confidentially. Due to the immediate need for this data to support the various DOT and Administration efforts, written submissions should be provided as quickly as possible, but no later than noon February 14, 1994, to the Office of Commercial Space Transportation, room 5415, 400 Seventh Street SW., Washington, DC 20590 or by fax to (202) 366–7256.

In order to assure the orderly presentation of information, and to try to accommodate all speakers, each person wishing to present information at the meeting, whether in a personal or a representative capacity on behalf of an organization, will be allotted five minutes. Persons who wish to present information at the meeting should notify OCST no later than February 8, 1994, to reserve their allotted time. If possible, OCST will notify interested persons if additional time is available. Department officials chairing the meeting may take additional time to ask clarifying questions of the speaker. To reserve speaking time, please telephone (202) 366–5770. Additional information may be obtained by contacting Ms. Linda H. Strine.

Dated: January 31, 1994.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 94–2583 Filed 2–1–94; 12:24 pm]

BILLING CODE 4910–62–P

Federal Aviation Administration

Atlantic City International Airport, Atlantic County, New Jersey, Environmental Assessment (EA)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Assessment (EA).

SUMMARY: The Federal Aviation Administration (FAA) is issuing this

notice to advise the public that an Environmental Assessment will be prepared and considered for the implementation of the proposed plan to facilitate development on a portion of the Atlantic City International Airport in New Jersey.

SUPPLEMENTARY INFORMATION: The FAA as lead agency, in cooperation with the South Jersey Transportation Authority (SJTA) as joint lead agency will prepare an Environmental Assessment intended to assess the environmental impacts related to various alternatives for development at the Atlantic City International Airport. The Atlantic City International Airport consists of a total of 5,143 acres; 5,059 acres of property termed the "FAA Technical Center" which includes the Federal Aviation Administration and Air National Guard (ANG) facilities owned by the FAA, and 84 acres owned by the South Jersey Transportation Authority which is used to accommodate the Atlantic City International Airport Civil Terminal area. The 84 acre Atlantic City International Airport Civil Terminal Area is independent of the 5,059 acre site. The Atlantic City International Airport is located in portions of Hamilton, Egg Harbor and Galloway Townships in Atlantic County, New Jersey. The Atlantic City International Airport is approximately 10 miles northeast of Atlantic City.

The EA will consider the environmental impacts of the no build alternative and various build alternatives. The no build alternative is defined as the non-implementation of further airport development such that the airport will remain in its existing condition.

The proposed build alternatives for the Atlantic City International Airport could include but not necessarily be limited to:

1. Construction of one additional terminal or expansion of existing terminal.
2. Construction of additional parking facilities.
3. Expansion of existing runway/taxiway facilities.
4. Improvement of the interior roadway system.
5. Construction of additional aircraft maintenance facilities including hangars, aprons, taxilanes.
6. Construction of additional air cargo facilities.

The Environmental Assessment will address impacts of the various alternatives on topics including, but not limited to the following: noise; land use; social impacts; induced socioeconomic impacts; air quality; water quality; Department of Transportation Act, Section 4(f) applicability; historic, architectural, archaeological and cultural resources; biotic communities; endangered and threatened species of flora and fauna; wetlands; floodplains; coastal zone management program; coastal barriers; wild and scenic rivers; farmland; energy supply and natural resources; light emissions; solid waste impact; and construction impacts.

INTER-AGENCY SCOPING MEETING: In order to provide agency input, a scoping meeting for Federal, State and local agencies will be held on February 17, 1994 at 1 p.m. at the Farley Service Plaza located on the Atlantic City Expressway in Elwood, New Jersey.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Region Office, Airports Division, AEA–610, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York 11430; (718) 553–1243 or Malcolm Lane, South Jersey Transportation Authority, Joint-Lead Agent, Atlantic City International Airport, New Jersey 08232.

Issued in Jamaica, New York on January 27, 1994.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 94–2395 Filed 2–2–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss noise certification issues.

DATES: The meeting will be held on March 10, 1994, at 9 a.m. Arrange for oral presentations by March 1, 1994.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, suite 801, 1400 K Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Trapani, Office of Rulemaking (ARM–208), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–7624.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on March 10, 1994, at the General Aviation Manufacturers Association, suite 801, 1400 K Street NW., Washington, DC 20005. The original meeting, scheduled to take place on January 20, 1994, was not held due to a state of emergency in Washington, DC. The agenda for the meeting will include:

- Committee Administration
- Consideration of a proposed task to harmonize Part 36 of the Federal Aviation Regulations with the European JAR 36
- A discussion of future meeting dates, activities, and plans

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by March 1, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on January 26, 1994.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–2397 Filed 2–2–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94–11]

Recordation of Trade Name: "California Silk Collection"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On October 27, 1993, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "California Silk Collection," was published in the **Federal Register** (58 FR 57894). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or

arguments submitted in writing by any person in opposition to the recordation and received not later than December 27, 1993. No responses were received in opposition to the notice. Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "California Silk Collection," is recorded as the trade name used by California Silk Collection, a corporation organized under the laws of the State of California, located at 4829 S. Eastern Avenue, Bell, California.

The trade name is used in connection with men and ladies garments made with silk and other nature fabric textile.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue NW. (Franklin Court), Washington, DC 20229 (202 482–6960).

Dated: January 26, 1994.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 94–2434 Filed 2–2–94; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 94–12]

Recordation of Trade Name: "Superior Seedless Grape Co."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On October 27, 1993, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Superior Seedless Grape Co.," was published in the **Federal Register** (58 FR 57894). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than December 27, 1993. No responses were received in opposition to the notice. Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "Superior Seedless Grape Co.," is recorded as the trade name used by Sun World, Inc., a corporation organized under the laws of the State of Delaware, located at P. O. Box 1028, 53–990 Enterprise Way, Coachella, California 92223.

The trade name is used in connection with table grapes.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue NW., (Franklin Court), Washington, DC 20229 (202 482–6960).

Dated: January 26, 1994.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 94–2433 Filed 2–2–94; 8:45 am]

BILLING CODE 4820–02–P

Application for Recordation of Trade Name: "Presentense"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Presentense.," used by MGP Corporation, a corporation organized under the laws of the State of Virginia, located at 21440 Pacific Boulevard, Sterling, Virginia 20167.

The application states that the trade name is used in connection with household ceramic articles, including tableware and dinnerware.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue NW. (Franklin Court), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue NW. (Franklin Court), Washington, DC 20229 (202–482–6960).

Dated: January 26, 1994.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 94–2432 Filed 2–2–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review; Voluntary Customer Surveys To Implement Executive Order 12862—Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; and (5) the frequency of response.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before February 14, 1994.

Dated: January 27, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

New Collection

1. Voluntary Customer Surveys to Implement Executive Order 12862—Department of Veterans Affairs.

2. Voluntary Customer Surveys will be used to implement Executive Order 12862. VA will gather the necessary information to determine the kind and quality of services VA customers want, and their level of satisfaction with existing services. The information will be used by VA to focus its planning and problem solving efforts to those service issues valued by the customer.

3. Individuals or households—State of local governments—Farms—Businesses or other for-profit—Federal agencies or employees—Non-profit institutions—Small businesses or organizations.

4. VA estimates a total burden of 1,439,177 hours—336,252 hours in FY 1994; 491,499 hours in FY 1995; and 611,427 hours in FY 1996.

5. On occasion.

[FR Doc. 94–2401 Filed 2–2–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 23
Thursday, February 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 8, 1994 at 10: a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 94–2642 Filed 2–1–94; 3:48 am]
BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 7, 1994.

A closed meeting will be held on Tuesday, February 8, 1994, at 11 a.m. An open meeting will be held on Wednesday, February 9, 1994, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 8, 1994, at 11 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institutions.
Opinion.

The subject matter of the open meeting scheduled for Wednesday, February 9, 1994, at 10 a.m., will be:

Consideration of the reproposal of rules implementing the large trader reporting section of the Market Reform Act of 1990. The reproposed rules would: (1) Require a person that effects significant quantities of transactions in publicly traded securities to file Form 13H with the Commission disclosing such person's identity and accounts; (2) require broker-dealers that carry accounts to maintain records of transactions effected by or for such person's accounts; and (3) require such broker-dealers to report to the Commission upon request, transactions effected by or for such person's accounts.

For further information, please contact Nicholas T. Chapekis at (202) 272–3115.

Consideration of a release that would discuss the need to establish recordkeeping and reporting requirements for brokers and dealers that operate automated trading systems. The release would propose for comment a rule that would require registered broker-dealer sponsors of these systems to maintain participant, volume and transaction records, and to report system activity periodically to the Commission.

For further information, please contact Gordon K. Fuller, Sheila C. Slevin, or Kristen N. Geyer (202) 272–2067.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anita Klein at (202) 272–2400.

Dated: February 1, 1994.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94–2641 Filed 2–1–94; 3:41 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 23
Thursday, February 3, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

[CFDA No. 84. 198]

National Workplace Literacy Program; Inviting Applications for New Awards for Fiscal Year [FY] 1993

Correction

In notice document 94-443 beginning on page 1418, in the issue of Monday, January 10, 1994, make the following correction:

On the same page, in the second column, in the eighth line, "March 10, 1994." should read "May 10, 1994."

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293, 351, 430, 432, 451, 511, 530, 531, 536, 540, 575, 591, 595, and 771

RIN 3206-AF69

Termination of the Performance Management and Recognition System

Correction

In rule document 93-30581 beginning on page 65531 in the issue of Wednesday, December 15, 1993, make the following corrections:

1. On page 65531, in the third column, in the first full paragraph, in the last line, "are" should read "as".

§ 531.201 [Corrected]

2. On page 65535, in the second column, in § 531.201, in the fourth line, "Services" should read "Service".

3. On page 65536, in the third column, in amendatory instruction 40. to § 531.406, in the second line, "(b)(2)(ii)" should read "(b)(2)(iii)".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33425; File No. SR-CBOE-93-58]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange Inc. Relating to the Maintenance by Members of Certain Written Policies and Procedures

January 5, 1994.

Correction

In notice document 94-561 beginning on page 1573 in the issue of Tuesday, January 11, 1994, the date was omitted and should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33236; File No. SR-NASD-93-36]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Extension of Public Comment Period for Proposed Rule Change

Correction

In notice document 93-29217 appearing on page 63195 in the issue of Tuesday, November 30, 1993, the release no. should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-19856; 811-2672]

MFS Managed Municipal Bond Trust; Application for Deregistration

November 10, 1993.

Correction

In notice document 93-28221 beginning on page 60720 in the issue of Wednesday, November 17, 1993, the date was omitted and should read as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
February 3, 1994

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 351

Vaginal Drug Products for Over-the-Counter Human Use; Withdrawal of Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 351

[Docket No. 82N–0291]

RIN 0905–AA06

Vaginal Drug Products for Over-the-Counter Human Use; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice to withdraw the advance notice of proposed rulemaking of October 13, 1983 (48 FR 46694) that would have established conditions under which over-the-counter (OTC) vaginal drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of withdrawal after considering the report and recommendations of the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (the Vaginal Panel) and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This action is being taken in part because the agency has determined that some of the recommended labeling indications relate to cosmetic claims and not drug claims. In addition, recommended labeling indications and ingredients used for minor irritation, itching, or soreness are not unique to the vaginal area and are already being considered in other OTC drug rulemakings (e.g., antifungal, antimicrobial, and external analgesic). Therefore, those ingredients and indications will be considered in those other rulemakings, as appropriate.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 13, 1983 (48 FR 46694), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC vaginal drug products, together with the recommendations of the Vaginal Panel, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 11, 1984. Reply comments in response to comments filed in the initial comment period could be submitted by March 19, 1984.

In accordance with § 330.10(a)(10), the data and information considered by the Vaginal Panel were put on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

In this notice, FDA states for the first time its position on the establishment of a monograph for OTC vaginal drug products based on the Vaginal Panel's conclusions and recommendations on OTC vaginal drug products, the comments received, and the agency's independent evaluation of the Vaginal Panel's report. In the preamble to the advance notice of proposed rulemaking for OTC vaginal drug products (48 FR 46694 at 46695), the agency expressed its concerns about: (1) The ability of a woman to recognize the nature or cause of the symptom(s) of vaginal itching, irritation, or soreness in order to determine which kind of drug product to select to treat the condition, and (2) whether 1 to 2 weeks of self-medicating with an OTC drug product may pose an unacceptable delay in seeking professional attention if the symptom(s) of itching, irritation, or soreness are due to *N. gonorrhoea*, *Trichomonas*, *Candida*, or other organisms that will not be eradicated by topical therapy with nonantimicrobial OTC drug products. At that time, no final agency decisions were made regarding the Vaginal Panel's recommendations or the above stated concerns. The agency invited specific comments on these issues.

In response to the advance notice of proposed rulemaking, four drug manufacturers, two trade associations, nine consumers, four medical associations, two pharmaceutical associations, three surgeons general, one poison control center, three consumer groups, two community health associations, and three practicing medical groups submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (address above).

All OTC volumes cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of May 16, 1973 (38 FR 12840) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch under docket number 82N–0291.

I. The Agency's Tentative Conclusions on the Comments

A. General Comments

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464 at 9471 to 9472), and in paragraph 3 of the preamble to the tentative final monograph for OTC antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated in those documents. Court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. (See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–698 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).)

2. One comment disagreed with the Vaginal Panel's statement that "If an active ingredient is present in a therapeutic concentration, the product is a drug, even if that product does not claim to produce the effect which will result from the action of the therapeutically effective ingredient * * *," (48 FR 46694 at 46701). The comment argued that drug status of a product is determined only by its intended use, not by the inclusion of certain ingredients, and the presence of a certain ingredient in a product offered solely as a cosmetic does not make the product a drug. The comment stated that FDA's policy concerning drug versus cosmetic status has been stated in many documents, including the procedural regulations governing the OTC drug review (37 FR 9464 to 9475), and that the Vaginal Panel did not properly apply this policy. The comment added that there is no justification to apply a different principle to this rulemaking for vaginal drug products. The comment requested that the term "drug product" be used throughout the regulation wherever products are specifically identified to emphasize the difference between

cosmetic and drug products, e.g., vaginal douche drug products.

The Federal Food, Drug, and Cosmetic Act (the act) provides the statutory definitions that differentiate a drug from a cosmetic. A "drug" is defined in part as an article "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease" or "intended to affect the structure or any function of the body * * *." (See 21 U.S.C. 321(g)(1)(B) and (C).) A "cosmetic," on the other hand, is defined as an article intended to be "* * * applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, * * *." (See 21 U.S.C. 321(i)(1).) Therefore, the agency agrees with the comment that the intended use of a product is the primary determining factor as to whether a product is a drug, a cosmetic, or both. This intended use may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor. See, e.g., *National Nutritional Foods Ass'n* v. *Mathews*, 557 F.2d 325, 334 (2d Cir. 1977).

The type and amount of ingredient(s) present in a product, even if that product does not make explicit drug claims, must be considered in determining its regulatory status. For example, the mere presence of a pharmacologically active ingredient could make a product a drug even in the absence of explicit drug claims. In these cases, the intended use would be implied because of the known or recognized drug effects of the ingredient (e.g., fluoride in a dentifrice).

The agency does not believe that it is necessary to use the term "drug product" throughout OTC drug monographs to distinguish between drug and cosmetic products because the labeling in final monographs applies only to products that fall within the statutory definition of a drug, and does not apply to cosmetic products. However, if a product is intended for both drug and cosmetic uses, e.g., cleansing and treating a disease condition, it must conform to the requirements of the applicable final monograph(s) for OTC drug products, as well as bear appropriate labeling for cosmetic use in conformity with section 602 of the act (21 U.S.C. 362) and the provisions of parts 701 and 740 (21 CFR parts 701 and 740).

3. In response to the agency's specific request for comment on the appropriateness of OTC drug products for treating the symptoms of itching, irritation, and soreness in or around the vagina (48 FR 46694 at 46695), several comments stated that treating these symptoms with OTC drug products is appropriate and rational therapy because women can readily recognize these symptoms and the benefits to be derived from the use of these drugs far outweigh any risks associated with their OTC availability. A number of comments stated that there is no valid medical basis to conclude, as was suggested by FDA in the preamble of the advance notice of proposed rulemaking for OTC topical antifungal drug products (47 FR 12480, March 23, 1982), that a serious health hazard could result from self-treating the symptom of external feminine itching. The comments contended that the likelihood of masking more serious gynecological disorders such as gonorrhea or trichomoniasis, or masking a more serious condition such as diabetes, was highly unlikely provided the labeling of the products advises consumers to consult a physician if symptoms worsen or persist for longer than 1 week. To further support its contention that serious complications or delays in proper medical diagnosis are not likely to occur if the symptoms of external vaginal itching are treated with OTC drug products, one comment cited the safe marketing experience of OTC hydrocortisone products labeled with an indication that included "external genital (feminine) itching." The comment stated that none of the possible problems projected, i.e., the masking of serious disease, the inability to self-diagnose, and the presumed side effects of the drug, had materialized since the marketing of OTC hydrocortisone began in 1979. Several comments also argued that external vaginal itching and irritation are not necessarily caused by infection, but can often be caused by irritating clothing, sensitivities to cosmetics, inappropriate hygiene, or other external factors.

In contrast, several comments stated that women should never self-treat the symptoms of vaginal itching, irritation, or soreness because they are not capable of self-diagnosis (i.e., specifically determining an appropriate drug product to use based on various vaginal symptoms) and should always be evaluated by a physician. The comments added that self-treatment could unreasonably delay a proper diagnosis and could even complicate it.

The agency notes that all of the products submitted to the Vaginal Panel were intended for intravaginal use and with the exception of vaginal contraceptives, the use of these OTC vaginal products, e.g., douches, suppositories, had been for the most part limited to cosmetic purposes, e.g., cleansing, deodorizing, mechanical flushing. Thus, the agency concludes that with the exception of indications relating to minor itching, irritation, and soreness, all other recommended vaginal monograph indications listed in the Vaginal Panel's report (48 FR 46694 at 46729) are cosmetic in nature or outside the scope of the OTC drug review, e.g., "Astringent," "Removes vaginal discharge," "Removes vaginal secretions," "Mild detergent action." Such indications for vaginal products refer to a product's transitory cleansing effects rather than to claimed therapeutic effects. (See drug/cosmetic discussion in comment 2.) Therefore, except for some "astringent" claims (see comment 13), the agency considers these indications outside the scope of the OTC drug review. The agency has no objection to the continued availability of vaginal products bearing labeling claims related to cleansing for cosmetic purposes, but does not believe that these cosmetic products should be labeled or used for therapeutic purposes except under the advice and supervision of a physician. As a result of this withdrawal notice, manufacturers may need to relabel or reformulate some products now or in the future. However, if reformulation and/or relabeling are necessary, the cost will be minimal because reformulation and relabeling will be required, in any event, under other appropriate rulemakings.

The agency believes that consumers should have access to OTC drug products to provide temporary relief of vaginal itching and irritation. The agency recognizes that the safe marketing experience of hydrocortisone, which has been available OTC since 1979 with an indication that includes use on itchy anal and genital areas, provides support that serious complications or delays in proper medical diagnosis are not likely to occur if the symptom of vaginal itching is treated with OTC drug products. Therefore, based on the available data and information, the agency believes that the relief of vaginal symptoms such as itching and irritation is an acceptable labeling claim for certain OTC drug products.

As stated above, all of the products submitted to the Vaginal Panel were intended for intravaginal use and concerns arose about self-diagnosis, selection of an appropriate drug product, and self-treatment of intravaginal disorders. The Fertility and Maternal Health Drugs Advisory Committee (the Committee), in a meeting held June 14 and 15, 1990, discussed the proposal that vaginal fungicides be sold OTC for the treatment of yeast (*Candida*) infections. Although

a mechanism for initial self-diagnosis was not considered, the Committee believed that consumers could safely and adequately recognize and treat subsequent intravaginal yeast infections after an initial diagnosis had been made by a physician and recommended that vaginal antifungal drug products whose safety was well-established be made available OTC with appropriate labeling (Ref. 1). Based on the Committee's recommendations and other available data, the agency has determined that certain OTC drug products for intravaginal use to treat yeast infections or for the relief of minor irritation, itching, and soreness can be safely used OTC. However, as recommended above, the agency believes that antifungal or other drug product ingredients for OTC intravaginal use are appropriate only for those women who have previously been diagnosed by a physician as having had the condition for which these drug products are intended and are therefore able to subsequently recognize the symptoms of the condition. The agency intends to discuss proposed labeling and specific ingredients for OTC intravaginal use in an amendment to the final monograph for OTC antifungal drug products in a future issue of the **Federal Register.**

While a number of ingredients in OTC drug products could be used in and around the vagina to relieve symptoms such as itching, irritation, or soreness, the use of these ingredients is not specific or unique to the vaginal area; i.e., they could be used topically to relieve these same symptoms elsewhere on the body. For example, antifungals, antipruritics, skin protectants, and astringents all have potential for relieving symptoms occurring externally around the vagina as well as on other parts of the body. It should be noted, however, that certain drug product classes, e.g., antifungals, may be capable of relieving itching and irritation by means of killing the cause of the itch (e.g., yeast/fungus). These products would not be expected to be routinely effective in treating "itch" due to other causes, e.g., poison ivy, eczema, insect bites, etc.

Also, in other OTC drug rulemakings, the agency has included, where appropriate, the various conditions for which an ingredient is considered generally recognized as safe and effective for OTC use in one monograph. (See, for example, the discussion on hydrocortisone for use in psoriasis (51 FR 27346 at 27360) and the discussion on menstrual claims for internal analgesics (53 FR 46204 at 46209).) Therefore, for those ingredients that are considered safe and effective for use in relieving conditions in and around the vagina, the agency believes it is more appropriate to include a vaginal claim in the applicable OTC drug monograph rather than to have a separate monograph for ingredients and claims related to vaginal use only. (See, for example, "external feminine itching" claims for hydrocortisone products included in the tentative final monograph for OTC external analgesic drug products (48 FR 5852 at 5868).)

Therefore, based on the discussion above, the agency is withdrawing the advance notice of proposed rulemaking for OTC vaginal drug products, which indicated the intention to create new subpart B of proposed part 351. This withdrawal reflects the agency's intention regarding the language previously published for potential codification in part 351, but does not negate or reject the advisory panel's report. Specific vaginal claims for the various pharmacologic classes of ingredients will be considered in other appropriate monographs. Because the issues raised by the comments may significantly affect these other OTC drug rulemakings, the agency believes it is useful to respond to these issues in this document. These issues and the agency's response to them will also be discussed in other appropriate OTC drug rulemakings. Interested persons may, at that time, submit comments to the applicable rulemakings.

Reference

(1) Summary Minutes of the Fertility and Maternal Health Drugs Advisory Committee, dated June 14–15, 1990, in OTC Vol. 11BTFM.

4. Several comments supported the recommendations of the Advisory Review Panel on OTC Antimicrobial II Drug Products (the Antimicrobial II Panel) that proposed a prescription to OTC switch of certain topical antifungal drugs for treating external feminine itching associated with a yeast infection (47 FR 12480). These comments stressed that candidal (yeast) infections of the vagina are extremely common and recurrent and that women can recognize with reasonable certainty when they have a yeast infection, especially if they have had one before.

The agency is aware that all three OTC advisory review panels charged with reviewing products that could be used in or around the vagina concluded that vaginal infections could not be self-diagnosed or self-treated. The panels' conclusions are consistent with FDA policy that infections in general should not be self-diagnosed by consumers or self-treated with OTC drug products. The only exception to this general policy is the OTC use of topical antifungals for treating athlete's foot, jock itch, and ringworm. The Antimicrobial II Panel that reviewed topical antifungal drug products and FDA have determined that these infections are so common and recurrent that they are amenable to self-diagnosis and treatment. In addition, the Antimicrobial II Panel recommended that haloprogin, miconazole, and nystatin be switched from prescription to OTC status for external feminine itching associated with a yeast infection. The Antimicrobial II Panel did not recommend these ingredients for treatment of the infection itself, but believed that OTC availability of these ingredients would be beneficial in providing rapid symptomatic relief of itching. The issue of consumer diagnosis of recurrent infections after appropriate physician diagnosis of the initial infection was not discussed during any of the panels' consideration of this issue.

The Antimicrobial II Panel also recommended that haloprogin, miconazole, and nystatin be available OTC for the treatment of superficial skin infections caused by yeast (*Candida*) (47 FR 12480 at 12565) However, the agency concluded in the tentative final monograph for OTC antifungal drug products (54 FR 51136 at 51140) that no antifungal ingredient should be labeled for OTC use for the treatment of cutaneous candidiasis. However, the agency stated that cutaneous candidiasis claims for effective antifungal ingredients could appropriately be included in professional labeling. As stated in comment 3, in light of the recommendations of the Committee, the agency has reevaluated its position on the availability of antifungal drug products for OTC treatment of vaginal yeast (*Candida*) infections. The antifungal ingredients clotrimazole and miconazole nitrate, at specific concentrations, have been approved for OTC intravaginal use, for specific indications, under new drug applications (Refs. 1 and 2).

References

(1) Labeling from NDA 18–052 for Gyne-Lotrimin Vaginal Cream, in OTC Vol. 11BTFM, Docket No. 82N–0291, Dockets Management Branch.

(2) Labeling from NDA 17–450 for Monistat 7 Vaginal Cream, in OTC Vol. 11BTFM, Docket No. 82N–0291, Dockets Management Branch.

5. One comment disagreed with the Vaginal Panel's recommendation that ingredients classified as Category II for use in OTC vaginal drug products be removed automatically from vaginal

cosmetic products (48 FR 46694 at 46710). The comment stated that this action is unwarranted because the safety of cosmetic ingredients is assured by the manufacturers, who consider not only the scientific analyses done by the OTC advisory panels and FDA, but also additional published and unpublished data that may not have been reviewed by the panels. The comment also contended that the specific use of an ingredient in a cosmetic may differ from its use in a drug product.

The agency notes that the Vaginal Panel made this recommendation in discussing Category II combination vaginal drug products. The Vaginal Panel recommended to the agency that any Category II ingredient that causes a combination product to be placed in Category II for safety reasons be removed from products regardless of whether they are intended for use as a drug or a cosmetic because of concerns about protecting consumers from unsafe ingredients. While sharing the Vaginal Panel's concern, the agency agrees with the comment that automatic removal of Category II drug ingredients from cosmetic products is not warranted because other factors need to be considered. For example, while an ingredient may not be safe in one concentration for use as a drug, it may be acceptable for use at a lower concentration in a cosmetic product. However, the agency will look carefully at any ingredients that are present in cosmetic products when those ingredients have been found unsafe for use in OTC drug products. FDA is prepared to take appropriate regulatory action in preventing the use of ingredients in cosmetic products when a potential health hazard is known to exist with their continued use. (See 21 CFR part 700—subpart B.)

6. One comment stated that the Vaginal Panel "may have inappropriately suggested the need for effectiveness testing for vaginal drug product final formulations" (48 FR 46694 at 46724 and 46725). The comment stressed that the OTC drug review is intended to be an active ingredient review and that testing is not necessary for final formulations of these products.

In discussing testing guidelines for vaginal douche products, the Vaginal Panel simply stated that it did not require effectiveness testing for douches that make only cosmetic claims, e.g., "cleansing." However, the Vaginal Panel recommended that effectiveness testing should be required for those ingredients in vaginal douches that make drug claims, e.g., "relieving irritation."

As discussed in comment 3, the agency is withdrawing the advance notice of proposed rulemaking for OTC vaginal drug products and is referring consideration of specific claims and ingredients for use in and around the vagina to other appropriate OTC drug rulemakings. Any necessary final formulation testing will also be discussed in those rulemakings, e.g., ingredients used in vaginal antiseptic drug products.

B. Comments on Active Ingredients

7. Two comments objected to the Vaginal Panel's conclusion that data are insufficient to prove the safety of quaternary ammonium compounds (i.e., benzalkonium chloride, benzethonium chloride, and methylbenzethonium chloride) for vaginal use (48 FR 46694 at 46717). The comments stated that although the Vaginal Panel's concern was based on published literature reports where the use of these compounds was associated with infections caused by *Pseudomonas*, it was not scientifically sound to use these reports to conclude that a safety problem exists. The comments mentioned that the Vaginal Panel failed to state that these reports resulted from the contamination of solutions that were employed in laboratory and hospital settings to sterilize medical devices used in urinary and cardiac catheterization or cystoscopic or related invasive procedures. Such procedures are usually conducted on patients whose normal body defenses have been compromised. Because *Pseudomonas* infections occur primarily in debilitated patients and *Pseudomonas* does not cause vulvovaginitis, the comments stated that it is scientifically inappropriate to cite these reports and through extrapolation conclude that the use of quaternary ammonium compounds in vaginal drug products presents a health hazard to normal individuals.

The comments cited several references (Refs. 1 through 7) to show that the Vaginal Panel's concerns with respect to vaginal contamination by *Pseudomonas* in the presence of quaternary ammonium compounds are not supported by the weight of scientific data. The comments added that extensive toxicological studies on these compounds have been published (Ref. 8). The comments requested the agency to affirm the safety of quaternary ammonium compounds and classify them as Category I for use in relieving minor irritations of the vagina.

Another comment stated that quaternary ammonium compounds historically have been included in vaginal products as preservatives and that these ingredients should be allowed to continue to be used for this purpose.

The agency agrees with the comments' reasoning that the reports cited by the Vaginal Panel about *Pseudomonas* infections are not adequate to conclude that the use of quaternary ammonium compounds in OTC vaginal drug products may present a health hazard to normal individuals. The agency has no objection to the continued use of quaternary ammonium compounds as preservatives in OTC drug and cosmetic products provided the products are manufactured in accordance with established procedures that assure the adequacy of preservative systems and microbial limits of products.

With respect to the use of quaternary ammonium compounds as active ingredients in OTC vaginal drug products for relieving symptoms of itching, irritation, or soreness, the Vaginal Panel stated that it was unaware of any data that demonstrated effectiveness for these uses (48 FR 46694 at 46718). The comments did not include any new data, and the agency is unaware of any such data.

As explained in comment 3, the agency has decided to consider specific vaginal claims for the various ingredients in other appropriate rulemakings. Quaternary ammonium compounds are included as Category I ingredients in the tentative final monograph for OTC first aid antiseptic drug products, published in the **Federal Register** of July 22, 1991 (56 FR 33644). Any comments or new data received regarding specific vaginal use of quaternary ammonium compounds will be considered by the agency in the rulemaking for OTC topical antimicrobial drug products.

References

(1) Forkner, Jr., C. E., "*Pseudomonas aeruginosa* Infections," in "Modern Medical Monographs," vol. 22, edited by I. S. Wright and R. H. Orr, Gruen and Stratton, New York, pp. 71–73, 1960.

(2) Gardner, H. L., and R. H. Kaufman, "Nonvenereal Bacterial Vulvovaginitides," in "Benign Diseases of the Vulva and Vagina," C. V. Mosby Co., St. Louis, p. 212, 1969.

(3) Charles, D., "Major Problems in Obstetrics and Gynecology," W. D. Saunders Co., pp. 4–5, 1980.

(4) Pidieu, C. M., "The Vulva, Major Problems in Dermatology," vol. 5, edited by A. Rook, W. B. Saunders Co., Philadelphia, p. 99, 1979.

(5) Monif, G. R. F., "Infectious Disease in Obstetrics and Gynecology," 2d edition, Harper and Row, Hagerstown, MD, pp. 524–525, 1982.

(6) Mead, P. B., and D. W. Gump, "Antibiotic Therapy In Obstetrics and

Gynecology," in "Clinical Obstetrics and Gynecology," edited by H. J. Osofsky and G. Schaefer, Harper and Row, Hagerstown, MD, pp. 109–129, 1976.

(7) Gardner, A. et. al., "Long Term Multicenter Trial with Ta-Ro-Cap, A New Spermicidal Product," *Contraception*, 20:489–495, 1979.

(8) Finnegan, J. K., and J. B. Dienna, "Toxicity of Quaternaries," *Soap and Sanitary Chemicals*, February 1954.

8. One comment supported the Vaginal Panel's Category I classification of potassium sorbate (48 FR 46694 at 46704) and disagreed with the agency's conclusion that potassium sorbate is a new drug because it has not been marketed as a drug to a material extent and for a material time in the United States (48 FR 46694 at 46695). The comment stated that a product containing potassium sorbate had been marketed for over 2 years and that this ingredient is generally recognized as safe and effective for the treatment of minor vaginal itching and irritation and should be included as a monograph ingredient. The comment contended that potassium sorbate is safe because it was so recognized by the Vaginal Panel, and because of the lack of "any report of major side effects, adverse reaction or complaint" while 14 million units of a product containing this ingredient were sold for over 2 years before marketing was discontinued. The comment argued that potassium sorbate is effective because it was so recognized by the Vaginal Panel based on two adequate and well-controlled clinical studies (48 FR 46694 at 46704). The comment added that this ingredient has been historically used by physicians for treatment of vaginal itching and irritation, and that this professional use constitutes use "for a material time and to a material extent." The comment also argued that potassium sorbate is safer than povidone-iodine, which the Vaginal Panel recommended as a Category I ingredient for these uses. The comment concluded that potassium sorbate is not a new drug because of its historical use and because of its marketing history, and should be placed in Category I as a monograph ingredient.

In the preamble to the Vaginal Panel's report (48 FR 46694 at 46695), the agency stated its opinion as follows:

> The agency is not aware of the marketing of any drug product containing potassium sorbate as an active ingredient prior to adoption of the Panel's report, although at least one product has entered the marketplace since that time. Because potassium sorbate has not been marketed as a drug to a material extent and for a material time in the United States, the agency considers this ingredient to be a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)). It may not be marketed until FDA has approved a new drug application (NDA) for such use.

The agency has not at this time changed its position on potassium sorbate for the treatment of minor vaginal itching and irritation. However, issues about the agency's interpretations regarding marketing to a "material extent" and for a "material time" as threshold criteria for inclusion of an ingredient in the OTC drug review have been raised in a number of rulemakings. Citizen petitions (Refs. 1 and 2) have been filed requesting the agency to change its longstanding position on these threshold criteria, especially with regard to permitting foreign marketing to satisfy the material time and extent criteria. The agency intends to address the material time and extent issues in a consolidated response in a future issue of the **Federal Register**.

References

(1) Comments No. CP2, CP3, and CP4 Docket No. 78N–0038, Dockets Management Branch.

(2) Comment No. CP1, Docket No. 92P–0309, Dockets Management Branch.

9. One comment requested that Category I approval of povidone-iodine as an active ingredient for the relief of minor irritations of the vagina be extended to include a vaginal suppository as well as a douche dosage form. The comment stated that the absorption potential with a suppository dosage form should be no greater than with a vaginal douche, and that there is no basis for making a distinction between a suppository and a douche dosage form with respect to effectiveness.

In response to a comment comparing the relative safety of potassium sorbate to povidone-iodine (see comment 8), one comment contended that the safety and effectiveness questions raised by the other comment with respect to povidone-iodine were superficial and erroneous and were in disregard of the facts. The comment stated that over 1,000 published studies and over 30 years of experience demonstrate the safety and effectiveness of povidone-iodine and confirm its Category I status for vaginal use as a douche.

Povidone-iodine in various formulations for vaginal use, i.e., douche and gel, was originally reviewed under the FDA Drug Efficacy Study Implementation (DESI). The DESI panel concluded that povidone-iodine was effective as a douche, i.e., for cleansing purposes, and that povidone-iodine could offer some partial or temporary relief of itching and odor when infection was present. Only the douche formulation was deferred for consideration to the OTC drug review. In the **Federal Register** of October 13, 1983 (48 FR 46694 at 46705), the Vaginal Panel reviewed the povidone-iodine douche product (0.15 to 3 percent) and placed it in Category I for the relief of minor irritations of the vagina. The Vaginal Panel did not review povidone-iodine in a suppository dosage form because no data on this dosage form were submitted. However, the Vaginal Panel did consider the suppository dosage form for claims relating to relief of minor irritation, and reduction of number of pathogenic microorganisms, and stated that such claims must be substantiated by testing (48 FR 46694 at 46702). The safety and effectiveness of povidone-iodine for the relief of itching and minor irritation in and around the vagina will be discussed by the agency in the rulemaking for OTC topical antimicrobial drug products in a future issue of the **Federal Register**. (See also discussion in comment 17 regarding professional labeling claims.)

C. Comments on Labeling

10. One comment objected to the Vaginal Panel's recommendation that OTC drugs be labeled with the components of perfumes that are included in the products. The comment explained that fragrances and flavors are often made up of dozens of ingredients and that to list each of these individually would be a practical impossibility; furthermore, the composition of a perfume is a significant trade secret. The comment pointed out that this issue had been considered and rejected by Congress and FDA on several occasions over the past decade, and concluded that there was no reason whatsoever to change these previous decisions.

Because section 502(e) of the act (21 U.S.C. 352(e)) specifies the requirements for the labeling of active and inactive ingredients in drug products, there is no need to include such requirements in an OTC drug monograph. However, the agency notes that although section 502(e) of the act does not require the complete identification of all inactive ingredients in the labeling of OTC drugs, it does require the disclosure of certain ingredients, whether included as active or inactive components in a drug product. Although FDA does not require the inclusion of all the inactive ingredients in OTC drug product labeling, the agency urges manufacturers to list all inactive ingredients voluntarily as recommended by the Vaginal Panel. This information will enable the consumer with known

allergies or intolerance to certain ingredients to select products with increased confidence of safe use.

After the Vaginal Panel made its recommendations to FDA, the Nonprescription Drug Manufacturers Association (NDMA) (formerly the Proprietary Association), the trade association that represents OTC drug manufacturers who reportedly market 90 to 95 percent of all OTC drug products sold in the United States, implemented a program under which its member companies voluntarily list inactive ingredients in the labeling of OTC drug products under guidelines established by NDMA (Ref. 1). Although these guidelines do not specify the listing of each ingredient contained in the fragrance or perfume in the product, they do provide for such inactive ingredients as flavors and fragrances to be listed as "flavors" and "fragrances." Hence, the consumer with known allergies or intolerances to such inactive ingredients as flavors, fragrances, or perfumes would be generally aware of their inclusion in certain OTC drug products. The agency commends these voluntary efforts and urges all OTC drug manufacturers to label their products voluntarily in accordance with NDMA's guidelines.

Reference

(1) "Proprietary Association Adopts Voluntary Disclosure of Inactive Ingredients," news release, The Proprietary Association, Washington, May 14, 1984, copy included in OTC Vol. 11BTFM, Docket No. 82N–0291, Dockets Management Branch.

11. Several comments argued that FDA cannot legally and should not, as a matter of policy, prescribe exclusive lists of terms from which statements of identity and indications for use of OTC drug products must be drawn and prohibit alternative OTC labeling terminology which is truthful, not misleading, and intelligible to the consumer to describe such indications. Two comments argued that such a restriction is an unconstitutional restriction of commercial speech and exceeds FDA's authority. One comment stated that this "exclusivity policy" is not warranted as a matter of sound public policy, and recommended that FDA follow a guideline labeling policy instead of an exclusive one. One comment objected that the advance notice of proposed rulemaking was more restrictive in limiting the "statements of identity" than is the regulation in § 201.61 (21 CFR 201.61). The comment urged the agency to allow manufacturers the alternative ways of describing the statements of identity that are allowed in § 201.61.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under § 330.1(c)(2) (21 CFR 330.1(c)(2)), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either: (1) The specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., §§ 201.63 or 330.1(g).

12. One comment stated that FDA's exclusivity policy is a drug labeling policy that has no application to cosmetic claims appearing in the labeling of products that are both cosmetics and drugs.

The agency agrees with the comment that the labeling restrictions in OTC drug monographs apply only to products that fall within the statutory definition of "drugs" and not to cosmetic products. This distinction between drugs and cosmetics is discussed in comment 3.

Final OTC drug monographs cover only the drug use of the active ingredients listed therein. The concentration range, limitations, statements of identity, indications, warnings, and directions established for these ingredients in a monograph do not apply to the use of the same ingredients in products intended solely as cosmetics. However, if a product is intended for both drug and cosmetic use, it must conform to the requirements of the applicable final monograph(s). In addition to any indications allowed for OTC drug products bearing claims for vaginal use, such products may also bear appropriate labeling for cosmetic use(s), in conformity with section 602 of the act and the provisions of parts 701 and 740. In accordance with the final rule on the agency's exclusivity policy (51 FR 16258, May 1, 1986), cosmetic claims may not appear within the boxed area designated "APPROVED USES." As discussed at 51 FR 16258 at 16264 (paragraph 14), cosmetic claims may appear elsewhere in the labeling but not in the box should manufacturers choose the labeling alternative provided in § 330.1(c)(2)(i) or (c)(2)(iii) for labeling cosmetic drug products.

13. One comment agreed with the Vaginal Panel's conclusions that the terms "cleansing," "producing soothing and refreshing effects," and "deodorizing" (as used in the definitions of vaginal douche and vaginal suppository) are cosmetic claims (48 FR 46694 at 46701). The comment urged the agency to accept the Vaginal Panel's recommendation. In addition to the claims above, another comment also considered the claim "producing an astringent effect" to be a cosmetic claim. The comment argued that these claims do not make a vaginal product into a drug, that it is legally inappropriate to include them in the definitions of these products in proposed § 351.103 of the monograph, and that they should be removed from the definitions section and anywhere else they appear in the document.

The agency agrees that cosmetic claims should not be included in OTC drug rulemakings. Therefore, the cosmetic claims "cleansing," "soothing," "refreshing," and "deodorizing" will not be included in OTC drug monographs. The agency believes, however, that astringency can be either a drug claim or a cosmetic claim, depending on the intended use and labeling of the product. For example, astringent products intended and labeled for the relief of minor vaginal irritation or reduction in local edema would be considered as drugs, while astringent products intended and labeled for a refreshing effect would be considered as cosmetics. A product making both claims would be both a drug and a cosmetic. Thus, the agency will consider the intended use in determining whether it is a cosmetic, a drug, or both (see also comment 3).

14. One comment stated that the Vaginal Panel's categorization of cosmetic claims as Category II drug claims is inappropriate because cosmetic claims are not within the jurisdiction of the OTC drug review. The comment contended that the following claims were inappropriately classified as Category II drug claims by the Vaginal Panel (48 FR 46694 at 46710) because these claims are really cosmetic claims:

Effectively cleanses

Effectively deodorizes
Cleans thoroughly
Destroys odor
Continued vaginal cleanliness
Cleanses more thoroughly than other douches
Removes contraceptive jellies and creams
Changes water into a cleansing solution
Complete feminine hygiene
Personal hygiene
Hypoallergenic
Feminine hygiene
Intimate cleanliness
Prevents disagreeable odors
Effective germ killer
Routine feminine hygiene
Completely refreshed

The comment also contended that the Vaginal Panel placed the following "other product quality claims" in Category II and that these claims do not belong in the rulemaking because they are not drug claims:

Fortified triple strength
Scientifically balanced formula
Intimately understood
Changes water into a cleansing solution
Naturally safe ingredients
Formula like the natural environment in your body
Ph of 3.5
Effective liquid
Nonacid
Intended for all women who want to enjoy extra confidence in meeting people
As with all vaginal douches, its function is not to cover up odor
Unlike spray deodorants which offer less protection
Complete feminine daintiness
Clinically tested
Dainty and feminine
Gentle
Safe for delicate membranes
Contains only the mildest ingredients
Completely compatible with normal vaginal environment
Buffered to control a normal vaginal pH

Stating that the Vaginal Panel did not provide a reason for its recommendation, the comment requested that reference to these claims be deleted at the next stage of the rulemaking.

Although there will not be another stage in this rulemaking, the comment's concerns regarding these label terms are relevant to vaginal claims for OTC drug products subject to other OTC drug monographs. Therefore, the agency believes it is pertinent to address the comment's concerns.

The OTC drug review establishes conditions under which some OTC drugs are generally recognized as safe and effective and not misbranded. Two principal conditions examined during the review are allowable ingredients and allowable labeling. FDA has determined that it is not practical—in terms of time, resources, and other considerations—to set standards for all labeling found in OTC drug products. Accordingly, OTC drug monographs regulate only labeling related in a significant way to the safe and effective use of covered products by lay persons. OTC drug monographs establish allowable labeling for the following items: product statement of identity; names of active ingredients; indications for use; directions for use; warnings against unsafe use, side effects, and adverse reactions; and claims concerning mechanism of drug action. The agency agrees with the comment that some of the claims listed above are either solely cosmetic claims or do not relate in a significant way to the safe and effective use of OTC vaginal drug products and, therefore, are outside the scope of the OTC drug review. Although these terms are considered outside the scope of the review, if used in the labeling of OTC drug products they will be evaluated by the agency on a product-by-product basis, under the provision of section 502 of the act relating to labeling that is false or misleading. Moreover, any term that is outside the scope of the review, even though it is truthful and not misleading, may not appear in any portion of the labeling required by a monograph and may not detract from such required information. However, terms outside the scope of a monograph may be included elsewhere in the labeling, provided they are not false or misleading. In addition, as explained in comment 2, the labeling restrictions in final monographs apply only to products that fall within the statutory definition of a drug, and not to cosmetic products. However, if a product is intended for both drug and cosmetic use, it must conform not only to the requirements of the applicable final monographs, but also to section 602 of the act and the regulations in parts 701 and 740.

15. One comment contended that the use of the adjective "vaginal" modifying "douche" in the statement of identity in § 351.152(a) is unnecessary and superfluous because, in common language usage, the word "douche" has become synonymous with vaginal use. The comment added that the agency has codified this class of products as "douche preparations" in 21 CFR 369.20. The comment requested that the statement of identity allow for synonyms for "vaginal douche" such as "feminine douche," "disposable douche," and "douche." The comment argued that the term "vaginal douche" may be too sensitive for certain advertising media and that the requested synonyms plus the accompanying labeling would clearly define the product as intended for vaginal use only.

The agency recognizes the sensitivity to use of the word "vaginal" and will take this into consideration in developing labeling in the appropriate OTC drug monographs. (See, e.g., the labeling developed for hydrocortisone in the tentative final monograph for OTC external analgesic drug products (48 FR 5852 at 5868).)

16. One comment objected to the Vaginal Panel's recommendation in proposed § 351.152(b) that the two statements "Keep this and all drugs out of the reach of children" and "DOES NOT PREVENT PREGNANCY" appear on the principal display panel of OTC vaginal drug products. The comment argued that including such statements on the principal display panel is contrary to labeling requirements in other OTC drug regulations now in effect in that statements such as these are generally required to be displayed in a warnings section next to the directions for use. The comment further argued that vaginal douche products have not been shown less safe than or different from other OTC drug products to the extent that would necessitate inclusion of separate warning statements. The comment requested that the Vaginal Panel's recommended that proposed § 351.152(b) be deleted and that these statements be included with the recommended label warnings in proposed § 351.154(a).

The agency agrees with the comment that special placement of these warning statements on the principal display panel is unwarranted. The Vaginal Panel recommended that the statement "Keep this and all drugs out of the reach of children" appear on the principal display panel because the attractiveness and colorful appearance of many vaginal drug products may encourage children to open and consume the contents (48 FR 46694 at 46708). The agency is unaware of any evidence that OTC vaginal drug products are any more attractive or more likely to be opened and consumed by children than other OTC drug products. Therefore, the agency has determined that there is no need for special placement of this general warning statement in the labeling of OTC vaginal drug products. Because existing regulations in § 330.1(g) (21 CFR 330.1(g)) already require all OTC drugs to contain the warning "Keep this and all drugs out of the reach of children," there is no need

to include this warning in individual OTC drug monographs.

However, because the Vaginal Panel was concerned that there is a commonly held misconception by some people that douching prevents pregnancy (48 FR 46694 at 46708), the agency encourages manufacturers to voluntarily place the warning "DOES NOT PREVENT PREGNANCY" in the labeling of vaginal douche products. The agency will discuss vaginal drug product labeling regarding prevention of pregnancy and sexually transmitted diseases as part of the rulemaking for OTC antifungal drug products in a future issue of the Federal Register.

17. One comment urged deletion of the Vaginal Panel's recommended professional labeling statement in proposed § 351.180(b)(3), which reads: "The use of povidone-iodine as a douche may cause a transient rise of serum protein-bound iodine." The comment argued that in view of the Vaginal Panel's conclusion that a transient rise in serum protein-bound iodine levels (observed in some individuals) does not affect the safety of the drug and has not been shown to have clinical significance with respect to thyroid function (48 FR 46694 at 46705), the statement is unwarranted. The comment added that inclusion of such a statement in professional labeling is misleading because it directs unwarranted emphasis to an essentially meaningless event.

The comment also stated that if the agency decides not to delete this statement, the statement should be amended to read as follows: "While not affecting its safety, the use of povidone-iodine as a douche may cause a transient rise in serum protein-bound iodine in some individuals. Such transient elevation returns to normal within 7 to 30 days and there is no evidence that this has clinical significance with respect to thyroid function." The comment contended that this revised statement would present the full clinical significance of the rise in serum protein-bound iodine according to the Vaginal Panel's stated findings.

As discussed in comment 9, the agency intends to consider povidone-iodine for vaginal use in the rulemaking for OTC topical antimicrobial drug products in a future issue of the Federal Register. In the tentative final monographs in which povidone-iodine is a Category I ingredient (antifungal (54 FR 51136, December 12, 1989) and first aid antiseptic (56 FR 33644, July 22, 1991)), a statement regarding the transient rise in protein-bound iodine associated with the use of povidone-iodine has not been included in professional labeling. Any other professional labeling associated with vaginal use of povidone-iodine will be considered as part of the antimicrobial rulemaking and will not be further considered here.

D. Comments on Combinations

18. One comment requested that the Vaginal Panel's recommended list of permitted combinations in proposed § 351.120 be amended to provide for combinations of one Category I ingredient from any two, three, or four of the various pharmacologic classes. The comment stated that there is adequate precedent in the OTC drug review for combining Category I ingredients from one pharmacological class with Category I ingredients from another pharmacological class, without the necessity of elaborate testing of the combination.

As explained in comment 3, the agency is withdrawing the advance notice of proposed rulemaking for OTC vaginal drug products and is referring consideration of specific vaginal claims to other appropriate OTC drug rulemakings. Likewise, combinations of ingredients for vaginal claims will be considered in those respective rulemakings and will not be considered here.

19. The agency recognizes that the Vaginal Panel recommended some professional labeling indications for several of the ingredients it reviewed. (See Proposed § 351.180, 48 FR 46694 at 46729.) For a combination product containing the ingredients dioctyl sodium sulfosuccinate (docusate sodium) and sodium lauryl sulfate, the Vaginal Panel recommended the indication "For the treatment of *Trichomonas vaginalis*." For a combination product containing the ingredients calcium propionate and sodium propionate, the Vaginal Panel recommended the indication "For the treatment of *Candida albicans*." For the ingredient povidone-iodine, the Vaginal Panel recommended the indication "Clinically effective in a program of treatment for vaginal moniliasis, T-vaginales vaginitis, and nonspecific vaginitis."

In the preamble to the Vaginal Panel's report (48 FR 46694 at 46695), the agency disagreed with the Vaginal Panel's recommendations regarding calcium propionate and sodium propionate. Based on previous decisions made by the agency with respect to these ingredients under the DESI program, the agency placed the professional labeling indication recommended by the Vaginal Panel for calcium propionate and sodium propionate in Category II. The agency reaffirms that categorization in this document.

The agency also stated in the preamble to the Vaginal Panel's report that OTC marketing of these ingredients for the relief of minor vaginal irritations could not take place at that time because the studies relied upon by the Panel were the same as those reviewed by the agency and found to be inadequate under DESI. The agency invited comment and data that would support the Panel's recommendations on the safety and effectiveness of calcium propionate and sodium propionate as ingredients in OTC vaginal drug products. No comments or new data were submitted. Therefore, the agency is reaffirming its conclusions that these ingredients, singly or in combination, may not be marketed in OTC drug products with claims for vaginal use.

In recommending a professional labeling claim for docusate sodium and sodium lauryl sulfate, the Panel relied upon one published study (Ref. 1) to support its recommendation. The agency has evaluated this study and finds that it is insufficient to determine the safety and effectiveness of these ingredients for the treatment of *Trichomonas vaginalis*. The study does not satisfy the criteria for an adequate and well-controlled clinical study because it did not include a control group. In addition, it was not designed to determine the effect of these ingredients in treating *Trichomonas* but rather to determine the effect of pH on the removal of secretions from the vagina. Therefore, these ingredients, singly or in combination, may not be marketed in OTC drug products with claims (including professional labeling claims) for vaginal use.

Regarding the active ingredient povidone-iodine, the Panel (48 FR 46694 at 46705) stated that adequate data supported a claim of effectiveness against vaginal yeast (candidiasis or moniliasis), T-vaginales vaginitis and nonspecific vaginitis, but only when used in a treatment regimen consisting of the diluted douche and the full strength (10 percent) povidone-iodine products. Because the Vaginal Panel (48 FR 46694 at 46700) believed that claims of therapeutic benefit for treatment of specific vaginal infections must be restricted to professional labeling, e.g., for the treatment of trichomoniasis or moniliasis, labeling for the full strength (10 percent) product was not included in the monograph. However, the agency has since concluded that recurring vaginal yeast (*Candida*) infections can be safely treated OTC. The agency is currently reviewing the data the Vaginal

Panel considered as well as a subsequent petition filed in support of various vaginal claims and formulations for povidone-iodine (Ref. 4). The agency will discuss the use of povidone-iodine for the treatment of vaginal yeast (*Candida*) infections in a future **Federal Register** publication as part of the rulemaking for OTC antifungal drug products.

Two clinical studies were cited in the data submission to the OTC drug review to support the vaginitis claim (Refs. 2 and 3). The agency has reviewed the two clinical studies and has concluded that they are insufficient to demonstrate that povidone-iodine is effective in the treatment of vaginitis. Neither study satisfies the criteria for adequate and well-controlled studies because a control group was not included. Therefore, they are insufficient to demonstrate the effectiveness of povidone-iodine in the treatment of vaginitis.

References

(1) Fischer, R. R., "Detergent Alkaline Douches," *Pacific Medicine and Surgery*, 73:209–212, 1965.

(2) Shook, D. M., "A Clinical Study of a Povidone-Iodine Regimen for Resistant Vaginitis," *Current Therapeutic Research*, 5:256–263, 1963.

(3) Ratzan, J. J., "Monilial and Trichomonal Vaginitis Topical Treatment With Povidone-Iodine Preparations," *California Medicine*, 110:24–27, 1969.

(4) Comment No. CP, Docket No. 82N–0291, Dockets Management Branch.

II. The Agency's Conclusions on OTC Vaginal Drug Products

FDA has considered the comments and other relevant data and information available at this time and determined that specific claims and ingredients for use in and around the vagina will be included in other appropriate OTC drug rulemakings. Accordingly, the advance notice of proposed rulemaking published in the **Federal Register** of October 13, 1983 (48 FR 46694), which would have added a new subpart B (Vaginal Drug Products for Over-the-Counter Human Use) to proposed part 351 (Vaginal Contraceptive and Other Vaginal Drug Products for Over-the-Counter Human Use) (proposed 21 CFR part 351), is hereby withdrawn, effective February 3, 1994. As discussed above, claims that are cosmetic claims only will not be considered in any OTC drug rulemakings. Ingredients and drug claims related to use in and around the vagina will be considered in other appropriate OTC drug rulemakings. The agency has identified the following rulemakings as those appropriate for consideration of ingredients and claims for vaginal drug uses: (1) Antifungal drug products (docket No. 80N–0476), (2) external analgesic drug products (docket No. 78N–0301), (3) skin protectant drug products (docket No. 78N–0021), and (4) topical antimicrobial drug products (Docket No. 75N–0183).

The agency emphasizes that it is withdrawing only the advance notice of proposed rulemaking for these drug products and that this withdrawal does not in any way denigrate the scientific content of the report or negate the excellent work of the Vaginal Panel in its long efforts to produce it. FDA believes that the information in the Vaginal Panel's report will provide valuable guidance to the agency with respect to ingredients and vaginal claims for other OTC drug rulemakings. Further, this withdrawal of the advance notice of proposed rulemaking does not affect the current marketing status of any of the products that were considered in the Vaginal Panel's report. This withdrawal notice is issued under authority of secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 10, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

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February 3, 1994

Part III

Environmental Protection Agency

40 CFR Part 763
Asbestos Model Accreditation Plan;
Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPPTS-62107A; FRL-4170-1]

RIn 2070-AC51

Asbestos Model Accreditation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is issuing this interim final rule to revise its asbestos Model Accreditation Plan (MAP) to clarify the types of persons who must be accredited to work with asbestos in schools and public and commercial buildings; to increase the minimum number of hours of training, including additional hours of hands-on health and safety training, for asbestos abatement workers and contractor/supervisors; and to effect a variety of other necessary changes as mandated by section 15(a)(3) of the Asbestos School Hazard Abatement Reauthorization Act (ASHARA). This revised rule replaces the original MAP found at 40 CFR part 763, Appendix C to Subpart E. The original MAP contained six components which, taken together, comprised a model asbestos accreditation plan for States and EPA-approved training providers. These components included: (1) Initial training, (2) examinations, (3) refresher training, (4) qualifications, (5) decertification requirements, and (6) reciprocity. This revision adds two new components to the original MAP; (1) definitions, which help to determine the scope and applicability of the rule, and (2) new recordkeeping requirements for the providers of accredited training courses. The changes also specify the deadline for States to modify their accreditation programs to be no less stringent than the revised MAP as required by the Toxic Substances Control Act (TSCA) section 206(b)(2). Further, the revised MAP prescribes deadlines for training course providers and persons who must obtain accreditation to comply with new requirements; distinguishes between the training requirements for each of the five accredited training disciplines; adds several new topics to the project designer training curriculum; establishes new enforcement criteria and Federal procedures for withdrawing approval from accredited persons and training programs; and stipulates new information requirements for training certificates. Because the revisions expand the minimum requirements for an accreditation plan, States may have to modify their programs to insure that each State has a contractor accreditation plan that is at least as stringent as the revised MAP as required by TSCA section 206(b). Similarly, training providers may need to adjust their training course administration or curricula to comply with the revised MAP. Finally, EPA has modified the organization, and some of the language of the original MAP. These modifications, however, are technical, and do not impose new substantive requirements.

DATES: This Rule is effective April 4, 1994. Because this is an interim final rule, EPA is accepting further comment on this action. All written comments must be received by EPA no later than March 4, 1994. EPA will consider the written comments received during the 30-day comment period in determining the need for any further rule amendments.

ADDRESSES: Written comments should be sent to: Field Programs Branch, Chemical Management Division (7404), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., Washington, DC 20460. EPA does not anticipate receiving any comments that contain information claimed as confidential business information (CBI). If such comments are submitted, however, they must be clearly labeled as containing information claimed as CBI or they will be placed in the public record. CBI claims should be accompanied by statements substantiating the claim as described in 40 CFR 2.204(e)(4). If information is claimed as CBI, a nonconfidential version of the comments should also be submitted for the public docket.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

The Agency is requesting comment on this revised MAP only to the extent that it has amended or changed the original MAP. The Agency is not soliciting comments on provisions of the original MAP that remain unaffected by this action. Specifically, and notwithstanding the inclusion of some of the existing language from the original MAP in this revised MAP, the Agency will only entertain comments to the extent that they address actual changes which have been incorporated. Appendix C to subpart E of 40 CFR 763 is reproduced in its entirety solely for clarity and to facilitate understanding of how the changes and amendments fit within the existing regulatory structure.

I. Background

In 1986, Congress enacted the Asbestos Hazard Emergency Response Act (AHERA, or TSCA Title II) which mandated a regulatory program to address asbestos hazards in schools. A part of AHERA (section 206; 15 U.S.C. 2646) dealt with the mandatory training and accreditation of persons who would perform certain types of asbestos-related work in schools. Subsequently, in 1990, Congress enacted ASHARA (Pub. L. 101-637), which amended AHERA to extend some of the training and accreditation requirements to persons performing such work in public and commercial buildings. Consequently, EPA is now effecting regulatory changes to reflect and implement these statutory amendments.

Originally, section 206 of AHERA required EPA to develop a MAP providing for the training of certain types of persons performing asbestos-related work in elementary and secondary schools (15 U.S.C. 2646). Persons covered by this original MAP included those who inspected school buildings for asbestos-containing materials (ACM); developed asbestos management plans for schools; and designed or conducted response actions with respect to friable ACM, other than small-scale, short-duration activities, in schools. Such persons were required to obtain accreditation as a prerequisite to performing this work.

AHERA also required States to adopt a State accreditation program that was no less stringent than that described in the MAP (15 U.S.C. 2646(b)(2)). Persons could then obtain accreditation by completing either an EPA-approved training course, or a training course approved by a State with a program that was at least as stringent as the MAP, and by passing an examination for that course. Individual States, however, could elect to impose more stringent requirements as a condition of accreditation.

The original MAP established five accredited "disciplines" for asbestos-related activities in schools, which included: worker, contractor/supervisor, inspector, management planner, and project designer. For each discipline, it outlined a functional role and set of job responsibilities, and stipulated minimum training, examination, and continuing education requirements. It established areas of knowledge of asbestos inspection, management plan development, and response action

technology that persons seeking accreditation must demonstrate and that States must include in their accreditation programs.

On November 28, 1990, Congress enacted ASHARA and expanded the accreditation requirements to apply to persons who work with asbestos in public and commercial buildings as well as schools. Specifically, ASHARA expanded TSCA section 206(a)(1) and (3) to require accreditation for any person who inspects for ACM in a public and commercial building, or who designs or conducts a response action with respect to friable ACM in such a building. As a result of this amendment, the MAP accreditation requirements for inspectors, project designers, workers, and contractor/supervisors now apply equally to persons in both schools and public and commercial buildings. Congress, however, did not extend the accreditation requirement for management planners. As a result, TSCA requires accreditation for persons who prepare management plans if they work in schools, but does not require such accreditation if they work in public and commercial buildings (15 U.S.C. 2646(a)(2)).

ASHARA also required EPA to revise the current MAP by increasing the minimum number of hours of training, including hands-on training, required for asbestos abatement workers in both schools and public and commercial buildings. ASHARA, however, did not specify the amount of additional training that would be required. In addition, ASHARA authorized EPA to modify the MAP as necessary to implement the extension of accreditation requirements to public and commercial buildings.

Finally, ASHARA amended the penalty provisions of TSCA section 207 (15 U.S.C. 2647). It provided for a civil penalty for contractors who fail to comply with TSCA accreditation requirements by inspecting, designing, or conducting a response action in a school or public or commercial building without TSCA accreditation, or by employing individuals to conduct response actions in such a building, and failing to require or provide TSCA accreditation for the employees. A contractor who commits a violation is liable for a civil penalty of $5,000 for each day of a violation, except for a contractor who is a direct employee of the Federal Government (15 U.S.C. 2646 (g)).

The ASHARA accreditation provisions originally were to take effect on November 28, 1991. ASHARA, however, authorized EPA's Administrator to extend that effective date for one year. On January 7, 1992, the Administrator took action to extend the effective date until November 28, 1992 (57 FR 1913, January 16, 1992). The Administrator determined that accredited asbestos contractors were needed to perform school site abatement required under AHERA, and that such an extension was necessary to ensure effective implementation of section 203 of TSCA (ASHARA section 15(c)). As a result of this extension, persons who perform inspections, or plan or conduct response actions in public and commercial buildings were required to obtain TSCA accreditation beginning on November 28, 1992.

EPA has decided to phase-in the other new requirements contained in the revised MAP when the revision takes effect. These requirements include an increase in the minimum number of hours of training, including hands-on training, for asbestos abatement workers in both schools and public and commercial buildings, and other necessary revisions.

EPA is promulgating the revised MAP as an interim final rule that will take effect 60 days after the rule is published. The streamlined procedures that EPA has utilized to revise the MAP are fully consistent with the Congressional directive to EPA for developing the original MAP. AHERA specifically authorized the Agency to issue the MAP "after consultation with affected parties" (15 U.S.C. 2646(b)(1)(A)). EPA issued it after a public request for information in the **Federal Register** (51 FR 28914, August 12, 1986) and consultations with affected parties, but without engaging in full-scale notice and comment rulemaking. EPA has used procedures to revise the MAP that are as extensive as those that were used to develop the original MAP. EPA believes it is reasonable to conclude that Congress did not intend EPA to engage in the redundancy of consultation with affected parties and formal notice and comment rulemaking in either issuing the MAP or in revising it, and therefore intended EPA to issue this revision to the MAP after undertaking similar consultations with affected parties.

EPA finds that there is good cause to issue an interim final rule, without utilizing all of the notice and public comment procedures in section 553(b) of the Administrative Procedures Act (APA), because those procedures are impracticable and unnecessary under the circumstances (5 U.S.C. 553(b)). It is impracticable to utilize the full-scale notice and comment proceedings in section 553(b) because such proceedings would unjustifiably extend the rulemaking process, and would further delay the implementation of the revised MAP. Congress clearly intended that EPA act expeditiously to revise the MAP, and even established a deadline for the EPA revisions. EPA did not meet the deadline because of the time-consuming process that was necessary to create an accreditation plan that would coordinate with existing, diverse State accreditation programs, minimize disruption of current training providers, and contain other provisions necessary to implement the revisions. If EPA were to develop and publish a notice of proposed rulemaking pursuant to section 553(b), the revisions would have been even further delayed. The impact of such a delay would be exacerbated by the additional time that is required for States to pass conforming legislation and implement the revised MAP after it is issued.

Finally, full-scale rulemaking is unnecessary because EPA has communicated informally with affected parties, given notice of the revisions to the public, and provided an opportunity to submit information and comments prior to promulgating this interim final rule. Initially, the Agency consulted with affected organizations to identify revisions that were necessitated by ASHARA. These organizations included schools, commercial building owners and operators, asbestos abatement consultants and contractors, labor organizations, training providers, and States. Subsequently, EPA published a notice in the **Federal Register** that described the revisions that were being considered, and announced a public meeting to discuss the changes (57 FR 20438, May 13, 1992).

EPA also established a docket containing information which supports EPA's revision of the MAP. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the changes under consideration, EPA held a public meeting on June 8, 1992, in Washington, DC. Twenty-three persons presented oral comments for the record. A transcript of this proceeding is contained in the docket. EPA also received 80 written comments in response to the **Federal Register** announcement. These comments have also been filed in the docket, and were carefully considered by the Agency in revising the MAP.

II. Summary of Changes

The various new requirements of the MAP are described here in greater detail. This summary is organized by subject area.

A. Definitions

The promulgated revisions establish a new definitions section for the MAP. Seven terms are included to help clarify and delineate the scope and applicability of the MAP to work performed in public and commercial buildings. The seven terms, and their meanings, are summarized below:

1. *Public and commercial building.* The term "public and commercial building" is defined in TSCA section 202(10) to mean "any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units" (15 U.S.C. 2642(10)). This definition identifies those buildings where persons performing certain asbestos-related work are subject to the MAP training and accreditation requirements. Such buildings generally include apartment complexes, condominiums and cooperatives of more than 10 units, office buildings, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses, and factories. It also includes all industrial buildings, because industrial buildings are included within the broad statutory definition of public and commercial buildings.

This particular term does not include elementary or secondary schools as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854; 15 U.S.C. 2642(9) and (12)). The definition in the revised MAP excludes all detached single family homes, because they are residential buildings of fewer than 10 dwelling units.

Furthermore, consistent with the statute and EPA's regulatory approach for schools, the term is interpreted to include only the interiors of buildings except for exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. Consequently, accredited workers are generally not required for work on roofing or siding materials that are on the outside of either public and commercial buildings or schools.

2. *Friable asbestos-containing material (ACM).* In TSCA section 202, friable asbestos-containing material means any material containing more than one percent asbestos, which has been applied on ceilings, walls, structural members, piping, duct work, or any other part of a building, which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable ACM after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure" (15 U.S.C. 2642(6)). At no point does the statute regulate activities that involve nonbuilding materials, such as asbestos gloves or asbestos brake linings, that may be either stored or used inside of a building. Consequently, the use of the term "friable ACM" in the MAP refers only to "friable asbestos-containing building material (ACBM)," and, where the statute requires accreditation for activities associated with ACM, accreditation is only required if the asbestos is part of the building.

3. *Inspection.* Although AHERA required that schools conduct asbestos inspections, ASHARA did not extend this same requirement to public and commercial buildings. Furthermore, because the Asbestos-Containing Materials in Schools Rule ("Schools Rule") (40 CFR 763.80–763.119) simply listed the various activities required to be included as a part of these mandatory school inspections (40 CFR 763.85), without actually defining the term itself, a definition of "inspection" is necessary to delineate the scope of the MAP accreditation requirement as it applies to both schools and public and commercial buildings. Accordingly, the term "inspection" is defined to mean those activities undertaken to specifically determine the presence or location, or to assess the condition of, friable or non-friable ACBM or suspected ACBM, whether by visual or physical examination, or by collecting samples of such material. Similarly, the term includes all "reinspections" of friable and non-friable known or assumed ACBM which has been previously identified.

The inclusion of a definition for the term inspection is intended to clarify when a person must obtain TSCA accreditation before performing an inspection. TSCA Title II, as amended by ASHARA, did not define inspection. When Congress enacted ASHARA, however, the Schools Rule was in effect, and it identified the activities that constituted an inspection in school buildings (40 CFR 763.85 and 763.92). The definition of inspection adopted in the revised MAP is based upon the core inspection activities identified in the Schools Rule at § 763.85(a), including the visual or physical examination, and the sampling of ACBM or suspected ACBM to determine its location or presence or to assess its physical condition. Based upon the revised MAP, a person must be accredited to engage in any one of these core activities in a school or in a public and commercial building. In addition, the Schools Rule continues to require accreditation for any person who engages in any one of these core activities. Because the Schools Rule currently requires an accredited person to conduct the core inspection activities, and the revised MAP requires accreditation for those same activities, the revision will not expand the need for accredited inspectors in schools.

The definition, however, also allows for three specific exceptions, dealing with related activities which do not require accreditation. The three excepted activities include: periodic surveillance, compliance inspections, and visual inspections.

The first exception under this term addresses periodic surveillance of the type described in 40 CFR 763.92(b), which is commonly performed by custodial or maintenance workers. Periodic surveillance is distinct from reinspection and is limited only to visual observations. It refers to a visual examination of an area in a building that previously has been identified as containing ACBM, or that previously has been assumed to contain ACBM, and that is undertaken to identify changes in the physical condition of that ACBM. Thus, a person would not need accreditation to visually survey a ceiling that had already been identified in an earlier inspection or reinspection as suspected ACBM to determine whether the ceiling had been damaged by a water leak. If the person assessed the condition of the ceiling by collecting a sample, or touched it to determine whether it had become friable, however, then that person would have to be accredited as an inspector.

The second type of activity that is excluded from the definition of inspection is compliance inspections performed by Federal, State, or local regulatory agencies. These are excluded from accreditation because their primary purpose is to determine adherence to applicable statutes or regulations, and not to locate, assess, or remedy the condition of ACBM. TSCA Title II does not provide a clear definition of the types of inspection activities that require training. The legislative history of ASHARA, however, indicates that Congress intended to require training only for those persons who actually inspect for or abate asbestos in public and commercial buildings. *See* 136 Cong. Rec. S15304 (Oct. 15, 1990) (statement of Sen. Burdick). Based upon the purpose of ASHARA, EPA has concluded that government personnel who inspect to determine compliance with laws regulating asbestos are not required to obtain accreditation.

The third exception involves visual inspections of the type referenced in 40 CFR 763.90(i). These types of activities are excluded from the accreditation requirement because their purpose is to determine whether a response action is complete, not to actually inspect for asbestos. See 136 Cong. Rec. S15304 (Oct. 15,1990) (statement of Sen. Burdick). Moreover, when Congress enacted ASHARA, it was aware that AHERA required accreditation for persons who inspected for asbestos in schools. Persons who conducted visual inspections in schools to determine whether a response action was complete, however, did not have to be accredited as inspectors. The legislative history of ASHARA indicates that Congress did not intend to expand the categories of persons that had to be accredited when it modified the accreditation requirements to include public and commercial buildings as well as schools. As noted by Senator Chafee: "[ASHARA] does not require the accreditation of any category of individuals not now required to be accredited to perform asbestos abatement work [under AHERA]." 136 Cong. Rec. S15309 (Oct. 15, 1990) (statement of Sen. Chafee). Consequently, EPA has concluded that a person who conducts an inspection in a public and commercial building to determine whether a response action is complete does not have to be accredited as an inspector. Of course, many persons performing such activities will otherwise need accreditation as asbestos abatement workers or contractor/supervisors.

4. *Response action.* The term "response action" is defined in the MAP to mean a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable ACBM. This definition is consistent with the definition of "response action" in TSCA section 202(11) (15 U.S.C. 2642(11)), and with the definition of "response action" in the Schools Rule found at 40 CFR 763.83. Its incorporation into the revised MAP will therefore ensure that it applies equally to regulated activities in both schools and public and commercial buildings. Consequently, those activities that are response actions in schools will also now be response actions when and where they are undertaken in public and commercial buildings.

Moreover, a person planning or conducting a response action is subject to the MAP accreditation requirements only if the ACBM is friable (15 U.S.C. 2646(a)(3)). As defined in both the MAP and in TSCA section 202(6), "friable ACM" refers only to ACM that "when dry, may be crumbled, pulverized, or reduced to powder by hand pressure" (15 U.S.C. 2642(6)). It also includes previously "nonfriable material after such previously non-friable material becomes damaged to the extent that when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure" (15 U.S.C. 2642(6)). This statutory definition of friability thereby limits the scope of the accreditation requirements for response actions in both schools and public and commercial buildings to ACBM that is friable or expected to become friable during the course of the response action.

5. *Small-scale, short-duration activities.* For purposes of the revised MAP, "small-scale, short duration activities (SSSD)" are tasks such as, but not limited to: (a) Removal of asbestos-containing insulation on pipes, (b) removal of small quantities of asbestos-containing insulation on beams or above ceilings, (c) replacement of an asbestos-containing gasket on a valve, (d) installation or removal of a small section of drywall, or (e) installation of electrical conduits through or proximate to asbestos-containing materials.

SSSD can be further defined by the following considerations: (a) Removal of small quantities of ACM only if required in the performance of another maintenance activity not intended as asbestos abatement, (b) removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag, (c) minor repairs to damaged thermal system insulation which do not require removal, (d) repairs to a piece of asbestos-containing wallboard, or (e) repairs, involving encapsulation, enclosure, or removal, to small amounts of friable ACM only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement (such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function).

This definition is intended to establish a common exemption threshold for both schools and public and commercial buildings that limits the applicability of the MAP training and accreditation requirements. All persons in schools or public and commercial buildings who perform SSSD that do not otherwise meet the criteria for a major fiber release episode under 40 CFR 763.91(f)(2) are exempt from the MAP accreditation requirements. However, a SSSD removal of more than 3 square or linear feet of friable ACBM, where this amount of friable ACBM either falls or is dislodged, requires the use of an accredited worker.

6. *Major and minor fiber release episodes.* To help clarify the applicability and limits of the SSSD exemption under the MAP, EPA is incorporating two additional definitions for the terms "Minor Fiber Release Episode" and "Major Fiber Release Episode." Consistent with the Schools Rule (40 CFR 763.83 and 763.91(e), (f)), a minor fiber release episode is "any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission" that "involves the falling or dislodging of 3 square or linear feet or less of friable ACBM." A major fiber release episode is "any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission" that "involves the falling or dislodging of more than 3 square or linear feet of friable ACBM." The Schools Rule uses these terms, in addition to SSSD, as a means to distinguish between those maintenance activities that require the use of accredited workers, and those that do not. These terms help delineate when persons performing operation and maintenance activities are subject to MAP training and accreditation requirements. Like SSSD, they are basic to determining the scope of the regulation, and have been added for that reason.

B. Phased Implementation

EPA has decided that it is necessary to phase-in the MAP revisions to achieve an orderly transition to the revised plan. Additional time will be needed after the revised MAP has taken effect for States to adopt accreditation plans no less stringent than the revised MAP, for training course providers to modify their training courses in keeping with upgraded MAP standards, and for individuals to obtain new or additional training where applicable. For these reasons, the revisions incorporate a timetable with two distinct deadlines; one that applies to States, and another for accredited persons and training course providers.

1. *States.* EPA believes that it is reasonable to allow States a comparable amount of time to come into compliance with the revised MAP as was allowed under the original MAP. Therefore, the requirement of the original MAP, that each State must adopt an accreditation plan at least as stringent as the EPA

model plan within 180 days after the commencement of the first regular session of the State's legislature following EPA's adoption of the model plan, is carried over to the revised MAP. When Congress originally enacted AHERA, it required States to adopt such a plan, and established a deadline that was tied to the timing of the first legislative session following completion of the MAP. When it promulgated ASHARA, Congress did not modify TSCA section 206(b)(2) that requires States to have a plan at least as stringent as the MAP (15 U.S.C. 2646(b)(2)). When Congress enacted ASHARA, it was aware that States would need time to enact conforming State legislation. It is reasonable to conclude that Congress intended to allow States the same amount of time to adopt implementing legislation to comply with the MAP revisions in ASHARA that it had originally allowed for compliance with AHERA. The deadline for State revisions of accreditation plans allows States the time that is needed to revise State laws. When this deadline is combined with the other provisions to phase-in the MAP revisions, EPA believes that there will be an orderly transition to the expanded system of accreditation for schools, and public and commercial buildings.

Some States already will have contractor accreditation programs that meet or exceed the upgraded MAP requirements when the revised MAP takes effect. These States are essentially unaffected by the revisions, and may continue to operate as before. A second group of States will not have accreditation programs in place that are as stringent as the revised MAP when it first takes effect, but will have preexisting accreditation programs that are in compliance with the original MAP. These State programs may or may not be approved by EPA under the revised MAP. Until such a State revises its program to comply with the upgraded MAP standards, it will not have the authority to approve any new training courses to provide training or accreditation that satisfies the requirements of TSCA section 206(a) (15 U.S.C. 2646(a)). In the interim, however, the State may continue to train persons and issue the accreditation required by TSCA section 206(a) if the State program otherwise complies with the minimum standards of the original MAP. The State also may continue its approval of training course providers, if the State issued the approval before the effective date of the revised MAP, and the training provider is in compliance with the self-certification requirements contained in Unit V.B. of the revised MAP. This allows qualified training course providers to continue to train and issue accreditation that satisfies TSCA section 206(a) requirements.

Some States in the second group will revise their accreditation program to be at least as stringent as the MAP within 180 days after the commencement of the legislature's first regular session that is convened after the effective date of the revised MAP. When such a State achieves this program upgrade, it will regain the authority to approve new training course providers.

Other States in the second group, however, may fail to meet the deadline for achieving the necessary program upgrade. Beginning on their respective deadline dates, these States will no longer have the authority to train persons or issue accreditation that satisfies the requirements of TSCA section 206(a), or to approve training course providers to conduct TSCA training or issue TSCA accreditation. A training provider that had been approved by such a State automatically loses its State approval. A training provider that loses State approval in this manner, however, will become EPA-approved if the provider has self-certified and is otherwise in compliance with the revised MAP. Finally, such a State automatically loses any EPA approval it may have had. Once lost, a State would need to reapply for such approval under the procedures outlined in Unit II of the revised MAP.

A third group of States will not have any accreditation program in place when the revised MAP takes effect, or will not have a program which is at least as stringent as the original or revised MAP. These States are not in compliance with TSCA Title II, are not authorized to train persons or issue accreditation that satisfy the requirements of TSCA section 206(a), and may not approve training course providers to conduct TSCA training or issue TSCA accreditation. EPA strongly recommends that States apply for and retain EPA approval of their accreditation programs for the purpose of substantiating their compliance status under TSCA Title II. Substantiation of compliance benefits all affected persons and organizations, including States that may be considering reciprocal arrangements with other States.

2. *Training course providers.* The revised MAP stipulates that all approved training course providers, whether approved by EPA or a State, must self-certify that they have upgraded their approved training programs to comply with the requirements of the revised MAP within 6 months of the revised MAP taking effect. The certification must be received by EPA on or before October 4, 1994. This requirement applies across-the-board to all initial and refresher training courses in all five accredited disciplines even though actual curriculum modifications are only required for the initial worker, contractor/supervisor, and project designer courses. Self-certification is required for all courses and all disciplines because all training providers must certify that they not only comply with the prescribed training course curricula, but with the new recordkeeping and certificate provisions of the revised MAP as well. The self-certification process is to be accomplished by submitting a written assurance to EPA that courses and programs have been appropriately modified. The self-certification must be signed by an authorized representative of the training provider, and must include the following statement: "Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the training described in this submission complies with all applicable requirements of Title II of TSCA, 40 CFR part 763, Appendix C to Subpart E, as revised, and any other applicable Federal, state, or local requirements." The self-certification submission must also include documentation adequately describing the course and program modifications effected to achieve compliance with the revised MAP. Training providers with multiple course approvals are encouraged to certify all such courses through a single consolidated submission. Complete duplicate copies of self-certifications must also be sent to and received by any State approving offices as of the same deadline date. Training courses that have not self-certified as of October 4, 1994, will no longer be approved, and must reapply through a State Program which is no less stringent than the revised MAP to have their approval status restored.

As was previously announced in the **Federal Register** (54 FR 38802, September 20, 1989), EPA stopped accepting new training course applications from providers for review and contingent approval as of October 15, 1989. Since that date, all training courses without approval have had to apply directly to State Programs with accreditation plans no less stringent than the original MAP in order to obtain the necessary approval. Once a training course has been self-certified, a training

provider may continue to offer that training course pursuant to the revised MAP. If the course had initially been approved by an EPA-approved State, and that State subsequently forfeits its EPA-approved status, EPA will continue to recognize the training course as being an approved course if it has been self-certified and otherwise remains in compliance with the revised MAP.

3. *Accredited persons.* The revisions grandfather all persons who possess valid accreditation as of the day before the date upon which the revised MAP goes into effect. A person is considered to have valid accreditation if they are in possession of an accreditation certificate that has not yet expired. If a State allows a person with an expired certificate to reinstate accreditation by completing refresher training within the 12–month grace period, then such a person will also be considered to have valid accreditation for purposes of grandfathering. The person must successfully complete the necessary refresher training course within 12 months of the date their certificate expires. Persons who do not meet either of the above conditions do not possess valid accreditation, and will not be grandfathered for purposes of accreditation under the revised MAP.

Grandfathered persons will not have to repeat initial training in order to perform work subject to accreditation, but will have to continue to fully comply with all annual refresher training requirements.

Persons who do not possess valid accreditation as of the day before the date upon which the revised MAP goes into effect have two alternative means of obtaining initial accreditation. A person may take an upgraded training course, and obtain accreditation that complies with the revised MAP. Alternatively, a person may take a course that was approved under the original MAP and obtain provisional accreditation. However, this person must then also complete the upgraded training course for the same discipline within 6-months of the revised MAP taking effect, on or before October 4, 1994, in order to obtain accreditation that complies with the revised MAP and to continue working beyond that date. This mechanism will ensure that all persons who become newly accredited after the revised MAP takes effect will meet the upgraded training standards within 6 months, while at the same time, making it possible for all persons to acquire a provisional accreditation and continue to work during the 6–month transition period when training providers are upgrading their courses and programs.

From earlier consultations with training providers, EPA anticipates that many, if not most, will have little or no difficulty transitioning to the upgraded training course standards (OPPTS Docket No. 62107, Log No. B2–002). For worker and contractor/supervisor courses, this involves extending hands-on training from 6 to 14 hours. For the project designer course, it involves revising instructional materials as necessary to accomodate curriculum changes. For the inspector and management planner courses, there are no required curriculum changes per se. Because many training providers already comply with the new recordkeeping and certificate requirements as a matter of standard business practice, these adjustments are not expected to be burdensome. Development and submittal of the self-certification letter, by design, should also be a relatively simple task. In addition, EPA expects that once the revised MAP has gone into effect, demand for the upgraded training courses in favor of the original courses will provide sufficient market incentive for a significant number of training providers to self-certify quickly, thereby expediting an infrastructure shift from the old courses to the new.

The examples below are intended to help illustrate how accreditation will operate during the transition period.

a. Person "A" obtains initial accreditation as a worker 1–month before the revised MAP takes effect. This person is then grandfathered in when the revised MAP goes into effect 1–month later. The person must then complete worker refresher training within 11 months after the revised MAP takes effect in order to continue accreditation status unbroken.

b. Person "B" is a non-accredited consultant who is awarded an asbestos abatement contract 4 months after the revised MAP takes effect. This person is able to find and quickly complete an upgraded contractor/supervisor course, thereby obtaining initial accreditation. This person has met the new training standards, and thus is unaffected by the 6–month compliance deadline. The consultant must then satisfy the refresher training requirement within 1–year of the initial accreditation date in order to continue uninterrupted contractor/supervisor work.

c. Person "C" is a non-accredited consultant who is awarded a contract for project design 1-month after the effective date of the revised MAP. This person is unable to find an upgraded training course, so opts to take the old initial project designer training course and begin contract work without undue delay. This person may begin work, but must complete an upgraded project designer course within the 6-month compliance deadline in order to continue working in an uninterrupted manner. A consultant who does not complete the upgraded training course by the compliance deadline must then stop work that requires TSCA accreditation until obtaining upgraded accreditation.

The same transitional provisions apply to any person who seeks initial accreditation after the revised MAP takes effect, including inspectors and management planners. The revised MAP imposes certain new requirements on all disciplines, specifically new recordkeeping and certificate requirements. EPA has concluded that everyone who is initially accredited after the revised MAP takes effect should be subject to the same transitional provisions to insure that their training and accreditation will be adequately documented as required by the new rule, and that they will have certificates that contain all the necessary information. Such uniformity will make the accreditation requirements easier to comply with and enforce.

C. Distinct Training Disciplines

These MAP revisions reaffirm the principle that each of the five accredited training disciplines in the MAP is distinct from the others. Because each discipline reflects a different functional job role, proficiency in any one of the five disciplines requires a different mix of knowledge, skill, and ability. Even where training programs cover common subjects, these same subjects need to be given a different priority and emphasis depending upon the particular discipline a person is being trained for. To ensure that each discipline receives adequate training, the revisions have incorporated the following changed requirements.

1. Each initial and refresher training course offered for accreditation must be specific to a single discipline, and not combined with training for any other discipline. The past practice of training providers offering combined worker and contractor/supervisor training is not allowed.

2. Workers are no longer permitted to "upgrade" their worker accreditation to that of contractor/supervisor by completing only one additional day of training. Separate initial training as a contractor/supervisor is now required. Accredited contractor/supervisors, however, may perform as workers without obtaining separate accreditation as such. This is because contractor/supervisors have received more training

in the aggregate than workers to ensure that they can perform their more complex job functions, and they must otherwise know how to perform all of the various tasks which workers are normally called upon to perform.

3. Persons completing initial training for accreditation as contractor/supervisors are no longer permitted to work as accredited project designers during their initial 1-year term of accreditation. This dual-accreditation provision, found in section I.1.C. of the original MAP, has been deleted from the revised MAP. Persons seeking accreditation as contractor/supervisors must now complete the new 5–day initial training for contractor/supervisors, and persons seeking accreditation as project designers must now complete the new 3–day initial training for project designers.

D. Increased Training Requirements

Section 15(a)(3) of ASHARA mandated that EPA, as a part of revising its MAP, increase the minimum number of training hours, including additional hours of hands-on health and safety training, required for the accreditation of asbestos abatement workers in schools and public and commercial buildings. EPA interprets the phrase "asbestos abatement workers" to include both workers and contractor/supervisors. These groups have the greatest need for additional hands-on training because they either actually perform asbestos abatement work, or directly oversee it at the job site. The revised MAP therefore incorporates 1 additional 8–hour day of hands-on training for both the worker and the contractor/supervisor disciplines. This has the effect of increasing the worker course from a total of 3 days to 4 days of training, with the hands-on training component increased from 6 hours to 14 hours. Similarly, the 4–day contractor/supervisor course has been upgraded to a 5–day course, with 14 hours of hands-on activity. These training hour requirements not only fulfill the statutory mandate for additional hands-on training for asbestos abatement workers, but also ensure that training can be obtained within the practical limits of a normal 40–hour, 5–day workweek.

The minimum training hour requirements for the other three accredited MAP disciplines, that of inspector, management planner, and project designer have not been altered. Congress only mandated increased training for asbestos abatement workers, and the only accredited disciplines directly engaged in hands-on abatement work are the worker and contractor/supervisor. The project designer and management planner courses do not include any hands-on health and safety training component. Because inspectors likewise do not participate in abatement, the existing 4-hour hands-on component for inspectors is unaffected by the ASHARA mandate.

E. Expanded Project Designer Curriculum

The MAP revisions incorporate several additions to the mandatory curriculum for accredited project designer training, but do not extend the required length of this initial training program. These changes relate only to the scope of training; they do not require an accredited project designer to perform any particular work practices. Because of concerns that project designs may sometimes be either inadequately prepared and/or executed, the curriculum additions are aimed at both clarifying and improving the effectiveness of the project designer's functional role (see OPPTS Docket No. 62107, Log No. C1–030). Where no written design plan exists, implementation can be prone to failure. This may also occur where a project design has not adequately considered all relevant facets of an abatement project. For these reasons, the six new topics which have been added include: (1) The need for and methods of preparing a written project design, (2) techniques for completing an initial cleaning of the work area, (3) increased emphasis on the rationale behind the establishment of functional spaces, (4) the need for written diagrams and methods of diagraming all containment barriers, (5) the need for a written sampling rationale for air clearance, and (6) clarification of what constitutes a complete visual inspection.

F. Deaccreditation of Persons and Withdrawal of Course Approval

The MAP revisions establish minimum national criteria for suspending or revoking the accreditation of individuals as well as for suspending or withdrawing the approval of training courses. Also included are additional criteria that EPA may use, and States are free to adopt, as well as the procedures that EPA will follow when suspending, revoking, or withdrawing accreditation or approval. The specified procedures are derived from those used for the suspension, modification, or revocation of pesticide applicator certificates found at 40 CFR 171.11(f). EPA believes that these procedures provide adequate notice and process to affected individuals and training course providers, while enabling the Agency to act more quickly than through those procedures specified at 40 CFR part 22, which had also been considered by the Agency. States, in initiating these kinds of actions, would be bound by the requirements of their own State administrative procedures.

The enumeration of criteria for suspension, revocation, or withdrawal is not meant to be a complete list of enforcement actions and choices available to EPA. Since the MAP is a regulation promulgated under Title II of TSCA, persons violating the MAP may also be subject to assessment of civil administrative penalties. The MAP revisions also clarify that EPA may take independent actions against either training entities or accredited persons, without reliance upon State enforcement authority or initiative.

1. *Deaccrediting persons.* Four minimum criteria are established for triggering deaccreditation actions by EPA or a State. They include: (1) Performing work requiring accreditation at a job site without being in physical possession of initial and current accreditation certificates; (2) permitting the duplication or use of one's own accreditation certificate by another; (3) performing work for which accreditation has not been received; or (4) obtaining accreditation from a training provider that does not have approval to offer training for the particular discipline from either EPA or from a State that has a contractor accreditation plan at least as stringent as the EPA MAP.

EPA may also suspend or revoke a person's accreditation if such person has been found in violation of other asbestos regulations administered by EPA. States may wish to adopt this criterion, or modify it to include their own asbestos statutes or regulations.

In addition, the revised MAP identifies some of the situations when a person who is performing an activity that requires accreditation will be subject to civil penalties under TSCA. Examples include, but are not limited to: (1) Obtaining accreditation through fraudulent representation of training or examination documents; (2) obtaining training documentation through fraudulent means; (3) gaining admission to and completing refresher training through fraudulent representation of initial or previous refresher training documentation; or (4) obtaining accreditation through fraudulent representation of accreditation requirements such as education, training, professional registration, or experience. This list is not exhaustive, and there may be other situations where persons may be subject to penalties

under TSCA by conducting work without the requisite accreditation.

2. *Withdrawal of course approval.* This new provision requires that States have minimum criteria and procedures for suspending or withdrawing approval from approved training courses. In pursuing actions for withdrawal of approval of accredited training programs, States should follow their own State administrative procedures. EPA may directly pursue actions for withdrawal of approval of accredited training programs without reliance on State withdrawal actions or enforcement authority or actions. In taking such actions, EPA will use the same procedures specified for the suspension or revocation of accreditation, those found at 40 CFR 171.11(f), to suspend or withdraw approval of a training course.

EPA continues to have the ability to withdraw approval of accredited training programs if field site inspections indicate that a training course is not conducting training that meets the requirements of the EPA MAP. Similarly, the requirement that training course providers permit EPA representatives to attend, evaluate, and monitor any training course without charge to EPA is preserved.

EPA believes that training providers should understand the criteria that the Agency will use to trigger a withdrawal action. Minimum criteria which trigger the commencement of a withdrawal action for withdrawal of approval of accredited training programs have been added to the MAP, including: (a) Misrepresentation of the extent of a training course's approval by a State or EPA; (b) failure to submit required information or notifications in a timely manner; (c) failure to maintain requisite records; (d) falsification of accreditation records, instructor qualifications, or other accreditation information; or (e) failure to adhere to the training standards and requirements of the EPA or State MAP as appropriate.

EPA may also suspend or withdraw a training course's approval if an approved training course instructor or other person with supervisory authority over the delivery of training has been found in violation of other asbestos regulations administered by EPA. An administrative or judicial finding of violation, or execution of a consent agreement and order under 40 CFR 22.18, constitutes evidence of a failure to comply with relevant statutes and regulations. States may wish to adopt this additional criterion, or modify it to include their own asbestos statutes or regulations.

The formal procedures for withdrawing course approval do not apply to training providers that fail to comply with the self-certification requirements of the revised MAP and that do not upgrade their courses within 6 months of the effective date of the revised MAP. EPA is provisionally allowing training providers to continue to operate during that 6-month period pursuant to approval granted under the original MAP. A training provider that fails to comply with the self-certification requirements within 6 months, however, automatically loses its provisional approval by operation of law. No individual notices or adjudicative process is required to effect the loss of such provisional approvals pursuant to this rule.

G. Recordkeeping Requirements for Training Providers

The revised MAP imposes a variety of new recordkeeping requirements on training providers that are necessary to strengthen compliance with MAP training standards and to enable more vigorous enforcement of those standards by both EPA and the States. Four different types of records must be maintained: (1) Records documenting approved training course materials (e.g., copies of student manuals, instructor notebooks, handouts), (2) records demonstrating instructor qualifications (e.g., copies of resumes, approval letters, dates and names of courses taught), (3) records documenting examinations (e.g., copies of tests used, individual student scores, dates and locations of exams given), and (4) records documenting accreditation certificates (e.g., to whom conferred, for which disciplines, dates of issuance and expiration). The revisions further stipulate that all such records must be retained for at least 3 years, and that reasonable access to all such records must be provided upon request to either or both EPA and the States.

H. Accreditation Certificates

The revised MAP stipulates that each accreditation certificate issued by an approved training provider must now contain certain additional items of information which had not been specified in the original MAP. The new minimum certificate standard is intended to enable quick identification of and contact with the training provider that issued the certificate. The revised MAP specifically requires the inclusion of the issuing provider's name, address, and telephone number. This mechanism makes it possible for training providers, regulatory agencies, and the general public to verify the accreditation status of persons performing work subject to the MAP.

III. Responses to Comments

Comments on the various MAP changes being considered by EPA were received from many affected interest groups, including States, commercial buildings owners and managers, labor organizations, trade associations, asbestos contractors and consultants, training entities, power companies, universities, and federal agencies other than EPA. These written comments may be found in the docket supporting this action (OPPTS–62107). This Unit discusses EPA's responses to the significant issues raised in the comments received.

Comments and responses have been organized in this Unit according to the relevant sections of the May 13, 1992, **Federal Register** notice (57 FR 20438) under which they were solicited.

A. Definitions

1. *Public and commercial buildings.* Many commenters urged EPA to incorporate the NESHAP (40 CFR part 61 - National Emission Standards for Hazardous Air Pollutants) definition of "facility," so that greater consistency might be achieved between the various EPA asbestos rules. Although EPA is sympathetic to promoting regulatory integration whenever feasible, the statutory language of TSCA section 202(10) complicates this attempt. A regulated "facility" under the NESHAP includes residential buildings of more than four units, whereas the TSCA definition of "public and commercial building" includes residential apartment buildings of 10 or more units. Because EPA's mandate to issue and revise the MAP comes from TSCA, as amended by ASHARA, the TSCA definition is controlling. EPA must use the TSCA definition, even though it is less inclusive than NESHAP.

Other commenters suggested that the definition of the term "public and commercial building" should include ACM that is located both on the insides and the exteriors of buildings. EPA had earlier examined this same issue when it promulgated the Schools Rule and the original MAP pursuant to AHERA. At that time, EPA concluded that when AHERA used the phrase "in a school building," it meant the interior of the building, not the exterior (52 FR 41835, October 30, 1987). EPA adopted that interpretation in the Schools Rule which was in effect when Congress amended AHERA by enacting ASHARA. EPA believes that Congress intended the term "in" a public or commercial building to be given the same meaning as "in" a school building in the Schools Rule. Consistent with the approach

incorporated in the Schools Rule, training is required for work in interior areas only, except for exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

Several power companies and other industrial/manufacturing concerns objected to the Agency's proposal to include "industrial" buildings within the scope of the rule. They argued that the public generally does not have access to these buildings, is therefore not exposed, and that workers in these industrial buildings are already adequately protected by the OSHA asbestos standards or the EPA Worker Protection Rule. The accreditation requirements of the statute, however, clearly extend to activities in industrial buildings. TSCA section 202(10) defines "public and commercial buildings" expansively to mean "*any* building which is not a school building, except the term does not include any residential apartment building of fewer than 10 units" (15 U.S.C. 2642(10)) (emphasis added). The statutory definition includes all buildings with only two express exclusions for school buildings and residential buildings. Industrial buildings clearly do not qualify for either exemption. Thus, they fall within the category of any other type of building that is encompassed by the term "public and commercial building." Moreover, when Congress enacted ASHARA, it relied, in part, upon EPA's assessment of risk in public and commercial buildings, an assessment that included industrial buildings. EPA's 1988 Report to Congress on Asbestos in Buildings specifically identified industrial buildings as one of the types of structures included under the TSCA definition of "public and commercial buildings" (Report to Congress, page 2). Further, the inclusion of industrial buildings in the category of buildings where training is required is consistent with the purpose of ASHARA to protect workers as well as the public.

In extending the MAP training and accreditation requirements to public and commercial buildings under the ASHARA mandate, EPA recognizes that the revised MAP will now apply to activities in buildings that may be subject to the specific training requirements of other Federal asbestos regulations. This includes the competent person training requirements under the OSHA Asbestos Standard (29 CFR 1926.58) and the EPA Worker Protection Rule (40 CFR 763.121), the on-site representative training requirements under the asbestos NESHAP (40 CFR 61.145), and the training requirements for designated persons and operations and maintenance personnel found in the Schools Rule (40 CFR 763.84– 763.92). EPA wishes to clarify that a person subject to the accredited training requirements of the MAP will also remain subject to the applicable training requirements of these other asbestos rules. Compliance with the MAP does not automatically relieve a person of responsibilities under other asbestos rules.

2. *Friable ACM.* Several commenters, citing the need for regulatory consistency between schools and public and commercial buildings, urged the Agency to preserve the concept of friable ACM which had been applied in the Schools Rule. EPA agrees with this approach because it is consistent with the statutory mandate and because consistency between the Schools Rule and the MAP is desirable. Both rules must comply with the same TSCA section 202(6) definition of friable ACM. Thus, the Agency has incorporated that definition into the MAP. This ties the definition to ACBM that is or may become friable.

3. *Inspection.* Among those commenting on this issue, most expressed support for the broadest possible definition of "inspection," that would embrace all eight of the options outlined in the May 13, 1992 Federal Register notice (57 FR 20438). This expansive approach would not only extend accreditation requirements to include general environmental hazard assessments for insurance and real estate purposes, but also would specifically extend those requirements to all of the inspection-type activities required by other asbestos rules such as the Schools Rule, NESHAP, the EPA Worker Protection Rule and the OSHA Asbestos Standard. EPA believes that such an all encompassing definition is not warranted based upon risk, and would therefore result in unnecessary costs (see OPPTS Docket No. 62107, Log Nos. C1–025, C1–035, C1–038). EPA has elected a more targeted approach which focuses on both the object and the activity of inspecting for asbestos. The statute limits the accreditation requirement to those persons who "inspect for ACM in school buildings...or in a public or commercial building" (15 USC 2646 (a)(1)). EPA has adhered to this statutory language, and required accreditation only for those persons who inspect or reinspect specifically for ACBM. This would include, however, an inspection undertaken pursuant to NESHAP (40 CFR 61.145(a)) in a school, or public and commercial building, where the building owner or operator is required to thoroughly inspect the building for the presence of asbestos prior to commencing a demolition or renovation activity. Similarly, inspections required by other regulations would also be subject to accreditation, if the inspection, as defined in the revised MAP, included a component that was specific to ACBM, and was conducted within a school, or public and commercial building subject to the revised MAP. This includes more general inspection-type activities (e.g., environmental assessments) where asbestos is one of several potential hazards or materials that are being looked for or examined. Regardless of what other activities a person may be undertaking, if the person is inspecting for ACBM in a school, public, or commercial building, that person must be accredited to perform the asbestos inspection component of that activity. Conversely, if a person is performing an environmental assessment or building inspection that does not include an asbestos inspection component, that person does not require asbestos accreditation to perform that activity.

As described earlier in Unit II.A.3. of this preamble, other specific exceptions to the inspection accreditation requirement include: (1) persons performing periodic surveillance of the type described in 40 CFR 763.92(b), (2) compliance-related inspections performed by employees or agents of Federal, State or local government, and (3) visual inspections of the type described in 40 CFR 763.90(i) for purposes of determining the completion of a response action.

4. *Response action.* Commenters overwhelmingly supported a definition for response action that would treat this term the same way both for schools and for public and commercial buildings. EPA agrees with this approach because it provides regulatory consistency between the MAP and the Schools Rule. Because many of the same contractors will be performing abatement work in both schools and public and commercial buildings, the use of the same standard for both will further promote comprehension of and compliance with the new accreditation requirements. The definition in the revised MAP is therefore the same as that which appears in the Schools Rule. Consequently, if a response action were undertaken in a school, and the same activity was then undertaken in a public or commercial building, both activities would be considered response actions, and both activities would be required to engage the services of accredited workers unless specifically excluded

under the exemption for small-scale, short-duration activities. It should be noted, however, that there are other aspects relating to the conduct of response actions which may be different for schools than for public and commercial buildings. One example would be the requirements found at 40 CFR 763.90 for air clearance at the completion of a response action which are applicable to such activities in schools but not in public and commercial buildings.

5. *Small-scale, short-duration activities (SSSD).* A majority of commenters supported the extension of the existing Schools Rule training exemption for SSSD work in schools to public and commercial buildings (see 40 CFR 763, Appendix B to Subpart E). EPA agrees with the use of this exemption in the revised MAP, because it both preserves regulatory consistency and promotes compliance with the statute. Also, absent such a threshold exemption, a great many persons involved in operation and maintenance-type activities in buildings would have to be specially trained, regardless of risk.

6. *Major and minor fiber release episodes.* A common theme among those commenting on the prospective incorporation of an SSSD exemption into the MAP was that this concept lacked clarity, and was therefore difficult to interpret and apply. EPA is responding to this concern in two ways. First, by using the existing SSSD exemption from the Schools Rule, the MAP will apply the same accreditation exemption to all buildings (schools and public and commercial buildings) and thereby minimize any potential confusion among the regulated community. Secondly, by adding the definitions of major and minor fiber release episodes, the Agency is seeking to provide the clearest possible meaning to this exemption while keeping it entirely within the framework established by the Schools Rule.

B. Phased Implementation

1. *States.* Several State commenters expressed concern that an allowance of 180 days following their next legislative session would not provide them with sufficient time to upgrade their programs in keeping with the increased training requirements of ASHARA. Although EPA acknowledges the difficulties inherent with transitioning established State programs, the changes were mandated by Congress when it enacted ASHARA. Furthermore, the relatively short timeframes established in ASHARA for EPA to implement these training mandates clearly communicated a desire and intent for prompt action. For these reasons, EPA believes that it is reasonable to allow States a comparable amount of time to come into compliance with the revised MAP as had been allowed for under the original MAP. This provides each State with an allowance of 180 days following the convening of their next regular legislative session to adopt a State accreditation plan that is no less stringent than the revised MAP. For some States with legislatures that meet every year, this means they will have a period of time not less than 6 months in which to implement these changes. For other States whose legislatures meet every other year, it means these States might have as long as 30 months to effect the changes.

2. *Training course upgrades.* Most commenters supported the 6–month compliance deadline for training course upgrades which EPA had proposed. They also supported self-certification on the part of training entities as an efficient and practical way of quickly implementing the new standards. Other commenters, however, contended that the 6–month deadline was either too short or too long, and expressed concerns about the ability of EPA and/or the States to properly audit these upgraded training programs. EPA considers the course upgrades prescribed in the revised MAP to be fully achievable within a 6-month timeframe. The revisions directly affect only 3 of the 5 basic courses, and none of the refresher courses. The initial worker and contractor/supervisor training courses must each incorporate 1 additional day of hands-on training and the initial project designer courses must expand their curriculum to incorporate the 6 additional items specified in the revisions. The original training provider self-certifications under ASHARA will be submitted directly to EPA's Headquarter's Office in Washington, DC., so that this data can be quickly compiled at the national level and integrated with existing data bases. This simplified and centralized process expedites course upgrades to ensure that the new training courses will be widely available within a short period of time. EPA and/or the States may then follow-up with field audits of these training programs as resources permit.

3. *Accredited persons.* Most commenters expressed support for the Agency's proposal to grandfather in all those persons who are in possession of valid accreditation as of the day before the effective date of the revised MAP. Many also suggested that everyone else should be allowed more than 6 months to obtain valid accreditation based upon the increased ASHARA training requirements. In contrast, a few suggested that a transition period of less than 6 months would be sufficient. Because of the fairly simple adjustments needed to upgrade training courses, and because EPA is providing an expedited procedure (through self-certification) for purposes of obtaining course provider upgrade approval, the Agency considers the 6-month deadline for obtaining new accreditation to be adequate. Persons who are already accredited on the date the revised MAP takes effect are not directly impacted by it. Upon reaching their annual expiration date, they will take their annual refresher training course, as before, and their accreditation will be extended for an additional year. Persons seeking new accreditation on and after the effective date of the revised MAP, however, will need to complete either an existing course that complies with the original MAP and thereby obtain provisional accreditation, or an upgraded course that complies with the revised MAP to obtain regular accreditation. If a person takes an existing course, that person will have to complete the upgraded training course within 6 months after the revised MAP takes effect in order to sustain their accreditation and continue working. This provision helps ensure that anyone needing to obtain initial accreditation during the period of transition between the original MAP and the revised MAP will have the opportunity to do so.

Several commenters suggested that the MAP requirements for refresher training should also be increased along with the basic requirements. This might be accomplished by either extending the length of mandatory refresher training, or expanding its curriculum, or both. EPA does not agree with this position, however, and believes that actual work experience is at least equivalent to requiring additional hands-on training as a basis for reaccreditation. At the time of refresher training, most accredited persons should have already acquired on-the-job experience at least equivalent to what this refresher hands-on training might otherwise provide.

C. Distinct Training Disciplines

While a majority of commenters agreed with the general principle of separate training courses, many also believed that an exception should be made in the case of combined worker/supervisor training. These parties pointed to the common elements in the prescribed training curricula for these two disciplines as the primary reason for allowing joint training. In this view, workers and supervisors would attend

the same course, with the contractor/supervisors coming back for 1 additional day of training after the worker curriculum had been completed. Although EPA permitted this accomodation for a period of time under the original MAP, the Agency has now decided that, in light of the Congressional mandate to strengthen and improve asbestos-related training programs, contractor/supervisors may no longer obtain accreditation by attending the same training course as workers with a 1 day add-on. Contractor/supervisors have markedly different job functions and responsibilities than workers. While many training elements are common to these two disciplines, each discipline requires presentation at a different degree of complexity and level of detail, depending upon whether a person is in training to become a worker, or in training to become a supervisor. An on-site foreman, unlike a worker, must know how each of the workers should perform his/her individual assigned tasks, and must also comprehend the total job to be done. As a result, a contractor/supervisor requires more in-depth training on each of the training elements than does a worker. By way of illustration, "regulatory review" is one curriculum training element that is common to both the worker and the supervisor courses. Where a worker must have a general understanding of the bounds established by asbestos regulations, the supervisor, as the on-site person responsible for regulatory compliance, must have a much greater depth of knowledge regarding these rules and the methods of complying. If supervisors attend the same training course as workers, and are provided the same lecture on "regulatory review," not only is it likely that the workers in this class will get more regulatory training than they need (and possibly less of something else more relevant to their jobs), but more importantly, the supervisors will not get the right mix of subject matter depth and breadth. EPA believes, therefore, that the best way to ensure that contractor/supervisors receive the specialized training they need is to keep their training courses separate and distinct from those of workers.

EPA believes, however, that it is permissible to allow an accredited contractor/supervisor to perform in the role of an accredited worker without possessing separate worker accreditation. Separate worker accreditation is unnecessary because the contractor/supervisor must essentially know all that the worker knows and more, and the contractor/supervisor has also completed more training than the worker (5 days as opposed to 4 days).

The situation is different, however, with respect to dual accreditation for contractor/supervisors and project designers. Because these two training disciplines share little in common, EPA is now eliminating the original MAP provision whereby persons completing contractor/supervisor initial training could obtain dual accreditation to work as both contractor/supervisors and project designers. After the effective date of the revisions, all persons must take separate initial and refresher training that is specific to their discipline in order to obtain or retain valid accreditation.

D. Increased Training Requirements

EPA had solicited public comment on the number of additional hours of training that would be appropriate for the revised MAP because ASHARA had left this amount unspecified. Whereas commenters suggested a variety of ways in which this might be accomplished, many expressed support for EPA's proposal to require one additional 8-hour day of hands-on training for the worker and the contractor/supervisor initial training courses respectively. The length of all other training courses is not affected by the revisions. There are a number of distinct advantages to EPA's approach: (1) All MAP training courses would be limited in length to no more than one 5-day business week, a period of time adequate to accomplish the requisite training, (2) existing training course materials would remain relevant and not require extensive modifications, (3) additional hands-on training should appropriately be given to those persons who actually perform hands-on abatement work (i.e., workers and contractor/supervisors), and (4) the addition of 8 hours of hands-on training (on top of 6 hours that are already required) should be relatively simple for providers to achieve, yet affords them a degree of flexibility in deciding how to go about doing it (i.e., in selecting the particular hands-on activities to be practiced or exercised).

Several commenters with experience in training, representing, or employing asbestos workers agreed that 8 additional hours of hands-on training for workers and contractor/supervisors was advisable. They noted that the additional day of training was necessary to allow workers to practice their jobs under actual working conditions, to gain necessary experience in performing tasks such as erecting and dismantling containment barriers, glovebagging, and scaffolding, and in working inside containment areas, or while wearing personal protective equipment, or in other common workplace situations (see OPPTS Docket No. 62107, Log Nos. C1-016 and C1-020). Commenters also noted that the additional day of hands-on training would help acclimatize workers without risk of exposure, and also would eliminate complaints regarding the need for on-the-job training (OPPTS Docket 62107, Log Nos. C1-020 and C1-064).

E. Expanded Project Designer Curriculum

A majority of commenters agreed with EPA's proposal to broaden the prescribed project designer training curriculum to include six additional lecture elements without extending the minimum required length of the course. The six elements have therefore been added, and include: (1) The need for, and methods of preparing a written project design, (2) techniques for completing an initial cleaning of the work area, (3) increased emphasis on the rationale behind establishment of functional spaces, (4) the need for written diagrams and methods of diagraming all containment barriers, (5) the need for a written sampling rationale for air clearance, and (6) clarification of what constitutes a complete visual inspection. These revisions have each been incorporated as additions to the initial project designer training curriculum. They will improve the effectiveness of the accredited training programs, and thereby help to ensure that project designers will be fully prepared to perform work in both schools and public and commercial buildings.

F. Withdrawal of Accreditation and Course Approval

Broad support also was expressed for EPA's proposal to incorporate minimum Federal criteria for proceedings relating to the deaccreditation of persons and the withdrawal of approval from accredited training courses, and to adopt standardized procedures for such actions. These changes had been proposed to: (1) Promote greater consistency and predictability nationwide, and (2) clarify the manner by which EPA might directly deaccredit individuals or training courses without reliance upon State authority or activity The criteria have therefore been promulgated as minimum Federal criteria which the States must match or exceed in their own programs. The procedures govern EPA activities only; the States being left free to adhere to their own internal administrative procedures pursuant to State law.

G. Recordkeeping Requirements for Training Providers

Several commenters stated that a records retention period longer than 3 years would be preferable for compliance verification purposes. EPA, however, consistent with other TSCA recordkeeping requirements (i.e., 40 CFR 704.11 and 761.180), regards a minimum 3–year retention period as adequate for this purpose, and appropriate when consideration is given to the costs associated with records maintenance. These 3 years are adequate to ensure that records will be available for anyone who needs to verify either initial or refesher accreditation status. Even if a person obtained initial accreditation, and then took advantage of a full 12–month grace period before obtaining refresher training, the 3–year retention requirement would ensure that the training provider has the records to verify the initial accreditation.

A number of training providers also expressed concerns about access; surmising that if their records were opened in an unrestricted manner to the public, that such providers would become vulnerable to burdensome or harrassing requests. They did not object, however, to training provider records being open to EPA and the States (see OPPTS Docket No. 62107, Log No. D1-001). EPA accepts this position, and it has been incorporated into the revisions (see Unit I.F.6. of the revised MAP). This would not preclude the public from seeking information directly from the training provider through telephone inquiries or requests, but would permit training schools to maintain a measure of flexibility in responding to inquiries.

EPA also had asked for comments about whether training providers should be required to verify the accreditation status of students enrolling in their courses. In reply, several training entities commented that this could present a significant burden that should not be imposed (OPPTS Docket 62107, Log Nos. C1-019 and C1-041). After considering this information, EPA agrees, and the revised MAP includes a recommendation rather than a requirement that training entities verify the accreditation status of students enrolling in their courses.

Regarding the more general question of whether or not recordkeeping requirements should be imposed, many commenters acknowledged the need for this action and expressed support for EPA's position.

H. Accreditation Certificates

While most commenters expressed support for EPA's proposal to require additional training provider information on accreditation certificates (i.e., issuer's name, address, and telephone number), a few suggested that other items might be required as well, including the name of the course instructor and the photograph, social security number, and signature of the person to whom accreditation is being conferred. The Agency does not consider these other items to be necessary on certificates, because the same information is generally available through other sources. The names of course instructors are otherwise provided through the recordkeeping requirements contained in the revisions, and personal identification items such as photographs, social security numbers, and signatures are commonly available on the professional licenses issued by State programs.

I. Miscellaneous

1. *Project monitor training and accreditation.* Several parties indicated that EPA should expand the MAP to include mandatory accreditation for a sixth training discipline, that of "Project Monitor." The functional role of a project monitor is often specific to a particular response action; but generally might include: (1) Monitoring a response action for compliance with contract/job specifications and regulatory requirements, (2) performing visual audits of a job site before, during and after a response action is undertaken, and (3) performing air monitoring as a part of a response action or for purposes of clearing a response action. Depending upon the particular mix of activities undertaken by the project monitor, this person might otherwise require accreditation, particularly if they somehow become directly involved in conducting any part of the response action. Typically, however, the project monitor is an agent or employee representing a building owner or manager who is engaged to oversee a contractor's performance of a response action in a school or public or commercial building. These commenters argue that because such persons are already widely used, steps should be taken to ensure a minimum level of competency.

ASHARA did not grant the Agency a clear mandate to enlarge the scope of federal accreditation to include additional training disciplines. Furthermore, implementing this course would necessitate more extensive changes to State programs and statutes, a consequence which would hinder State efforts to comply with ASHARA. For these reasons, EPA has incorporated a recommended training curriculum for such persons into the revised MAP and is urging States to consider adopting this curriculum for purposes of requiring project monitor accreditation under State law or regulation. Such State laws would not mandate that project monitors be used in every instance, but rather, would require their accreditation whenever a building owner or manager elected to employ the services of a project monitor. This curriculum was developed in 1992 through a roundtable discussion which involved numerous affected interests outside of EPA. The document which emerged from this process, entitled *Whitepaper on the Development and Implementation of Asbestos Abatement Project Monitor Training* (March 20, 1992), outlined a recommended 5–day training program. Even where States choose not to require accreditation under their State Plans for such persons, EPA recommends that training entities consider offering this course, and suggests that professionals working in this capacity seek out and obtain this or equivalent training.

2. *Operations and maintenance training and accreditation.* A few commenters suggested that persons responsible for SSSD operations and maintenance (O&M) activity involving ACBM should be subject to MAP training and accreditation requirements. They noted that while § 763.92(a) of the Schools Rule requires school maintenance personnel to take special "awareness" training, and, in some instances, additional O&M training, the MAP would not require training for all maintenance personnel in public and commercial buildings.

This difference in training requirements is based upon the statutory training scheme that Congress established in Title II of TSCA. Both the language of the statute, and the legislative history of AHERA and ASHARA support EPA's decision not to require MAP accreditation for all O&M personnel in public and commercial buildings.

When Congress enacted AHERA in 1986, it required MAP training and accreditation for persons who conducted response actions, but excluded certain types of O&M activities from the MAP training requirement (15 U.S.C. 2643(f), 2644(c), and 2646(a)(3)). It also required EPA to promulgate rules to regulate O&M programs in schools, and required local education agencies to develop and implement O&M plans, and to provide for the education of service and maintenance personnel with respect to asbestos-containing material.

EPA promulgated the Schools Rule pursuant to AHERA. The Schools Rule

does not require full MAP training and accreditation for all O&M workers, but does require it for any person in a school who: (a) Conducts a response action other than a SSSD activity (40 CFR 763.90(g)); (b) performs a maintenance activity that disturbs friable ACBM, other than a SSSD activity (40 CFR 763.91(e)); or (c) conducts a response action for a major fiber release episode (40 CFR 763.91(f)(2)(iii)).

In addition, the Schools Rule requires less extensive training for O&M school employees that are not performing an activity that falls within one of the three categories (40 CFR 763.92(a)). This last category of O&M employee does not have to be accredited.

Subsequently, in 1988, Congress amended AHERA, and created a new provision of TSCA, section 215, specifically to codify the O&M training requirements of the Schools Rule (15 U.S.C. 2655). Now, TSCA section 215 requires "proper training" for school employees who conduct O&M activities in a school (15 U.S.C. 2655(b)).

In 1990, Congress further modified TSCA asbestos training requirements when it enacted ASHARA. Congress expanded the MAP training requirements to cover persons working in public and commercial buildings, but it did not require MAP training and accreditation for all persons who perform O&M activities in such buildings. First, Congress left intact the original language in TSCA section 206(a) that exempts many persons who conduct O&M response actions from MAP training and accreditation requirements in both schools and public and commercial buildings (15 U.S.C. 2646(a)(3)). In the second place, Congress chose not to expand the coverage of TSCA section 215 and require limited training for O&M employees in public and commercial buildings. Finally, unlike the original AHERA that governs schools, Congress did not require EPA to promulgate rules regulating O&M programs in public and commercial buildings, nor did it require employers in such buildings to provide for the education of service and maintenance personnel with respect to asbestos-containing material.

In keeping with these Congressional actions, EPA has not required MAP training and accreditation for every O&M worker in public and commercial buildings. Rather, the revised MAP requires MAP accreditation where O&M workers are most at risk. O&M personnel must obtain MAP accreditation when conducting a response action, including a maintenance activity that disturbs friable ACBM, unless that activity is a SSSD activity, or when conducting a response action for a major fiber release.

3. *Management plans for public and commercial buildings.* A few commenters, noting that ASHARA section 15(a) specifically omitted management planners from the accredited disciplines being extended to public and commercial buildings, suggested that management plans should otherwise be required for such buildings. Although EPA, consistent with its manage-in-place policy articulated in the "Green Book" guidance (see *Managing Asbestos In Place: A Building Owner's Guide to Operations and Maintenance Programs for Asbestos-Containing Materials*, EPA No. 20T–2003, July 1990), considers management plans to be helpful tools in preventing asbestos exposures, the Agency is not requiring management plans for regulated buildings in this revision. ASHARA did authorize EPA to establish training standards for asbestos workers, but it did not authorize the Agency to require public and commercial building owners to conduct asbestos-related work in a particular fashion. However, for those regulated public and commercial buildings where asbestos-related problems are identified through inspections, EPA strongly recommends that plans be prepared for how to address these issues. EPA's Green Book should prove to be a useful reference in this respect. The Agency would also suggest that accredited management planners be engaged for purposes of developing such plans to ensure their adequacy.

4. *Use of accredited laboratories.* Several commenters expressed concerns about the prospective quality of analytical work to be performed with respect to public and commercial buildings, noting that EPA's announcement of additions and changes under consideration had not mentioned the use of accredited laboratories for the analysis of bulk and/or air samples taken from such buildings. TSCA section 206(d) provides for the establishment of the National Institute of Standards and Technology National Voluntary Laboratory Accreditation Program (NVLAP), and stipulates that only laboratories accredited under this program will be allowed to conduct analyses of asbestos bulk and air samples taken from school buildings under the authority of local education agencies (15 U.S.C. 2646(d)). But Congress did not extend this same requirement to the analysis of bulk or air samples taken from regulated public and commercial buildings.

EPA strongly recommends that these samples be analyzed by NVLAP-accredited laboratories because these laboratories have undergone Federal evaluation and testing and have met stringent performance standards. Further, EPA urges that asbestos abatement site air be analyzed by transmission electron microscopy (TEM) prior to building reoccupancy in a manner consistent with 40 CFR 763.90 (i)(3) and (4). This position is in keeping with EPA's on-going activity in schools where the allowance for the use of phase contrast microscopy (PCM) has been greatly diminished. EPA strongly recommends that abatement site air clearance samples collected from public and commercial buildings be analyzed by TEM at NVLAP-accredited laboratories. EPA now considers the technically superior TEM analysis to be both economical and widely available. TEM is technically superior to PCM because it is capable of measuring all asbestos fibers including those thin fibers not measured by PCM; therefore, TEM is the more stringent analytical tool to be used for analysis of airborne asbestos during abatement site air clearance.

5. *Instructor qualifications.* Some commenters were of the opinion that EPA had not gone far enough in establishing minimum qualifications for training course instructors. The original MAP stipulated that instructors needed to have academic training or field experience in asbestos abatement, yet allowed State programs to adopt their own more stringent qualification standards. Since promulgation of the original MAP, many States have elected to institute their own instructor qualification requirements, a fact which would now complicate any Federal effort to retroactively establish new minimum standards. EPA considers this to be an issue best left to the States to decide. So long as course instructors demonstrate relevant training and experience, and the knowledge and ability to provide effective instruction in the prescribed curriculum, EPA will continue to view such persons as meeting minimum standards. States are encouraged, however, to review this issue as they upgrade their programs in keeping with ASHARA.

A related issue had also been raised independently by the General Accounting Office (GAO) in a May 1991, Report to Congress entitled "EPA's Asbestos Accreditation Program Requirements Need Strengthening." In this report, GAO had recommended that EPA assess, in conjunction with its MAP revision, the need for requiring individuals working in the asbestos

professions to meet prequalification and experience standards. Although EPA responded to this comment by reevaluating this issue and discussing it with affected organizations, the fact that at least 17 States had already adopted widely varying prequalification standards posed a potentially significant obstacle (Source: State Asbestos Programs Related to AHERA; A Survey of State Laws and Regulations. National Conference of State Legislatures. September, 1992) (OPPTS Docket No. 62107, Log No. B1–024). These States had established their own prequalification standards for asbestos control professionals in response to EPA's earlier recommendation (contained in the original MAP) that they should consider doing so. Consequently, any action by EPA to retroactively impose new Federal minimum standards would add to the cost and difficulty of transitioning these State Programs into compliance with the revised MAP. Such an outcome would not be helpful in promoting ASHARA's objective to achieve a decentralized program administered by the 50 States. For this reason, EPA decided not to require new minimum prequalification standards in the revised MAP. Nonetheless, in support of this goal, EPA has increased its experience requirements through incorporation of an additional day of hands-on training in both the initial worker and contractor/supervisor training programs, and is renewing/continuing its recommendation that States adopt other appropriate prequalification standards of their own.

6. *Foreign language courses.* Several commenters suggested the need for specific requirements or accomodations for foreign language courses, citing the significant numbers of non-English speaking persons who are now seeking accredited training. EPA policy permits approved worker training courses in languages other than English so long as the course instruction, all of the course materials, and the course examination are each presented in the same foreign language. Given the lack of a uniform distribution of non-English speaking persons nationwide, with different languages prevailing in different regions of the country, the MAP will continue to allow States to adopt their own standards and procedures in this regard to address their individual and unique circumstances. EPA does, however, urge States to address these issues, and to accomodate the needs of their respective non-English speaking populations.

7. *Standard forms.* Some commenters remarked that the use of standardized forms for purposes of inspection reports and management plans would not only contribute to greater consistency and professionalism among accredited persons working with these tools, but might also facilitate the development of reciprocal arrangements between State programs. EPA agrees with these comments, and has incorporated specific recommendations into the training curricula for both inspectors and management planners which are aimed at promoting greater usage of standardized forms. EPA recommends that States consider the utility of adopting requirements for the use of standardized forms as an integral part of their asbestos regulatory programs.

8. *Federal recognition of State programs.* Several State commenters indicated that it is beneficial for a State to formally apply for and obtain Federal recognition of its accreditation plan. TSCA Title II specifically requires States to adopt accreditation plans that are no less stringent than the MAP, but does not require them to obtain formal EPA approval. Even though EPA approval is not statutorily required, it is beneficial. Where a State adopts and implements an accreditation program but does not obtain EPA approval, it is difficult for the industry and other States to determine whether such a State program complies with minimum Federal requirements and thus has the authority to issue TSCA accreditation. Where a person obtains a license from an unrecognized State, that person's credentials may not be readily accepted by an employer, a contractor, or another State in which the person might seek to find work, because absent EPA's approval, there is uncertainty about whether such a person is properly accredited. In contrast, EPA's approval of a State effectively resolves all of this uncertainty. EPA agrees with these comments, and strongly recommends that all States seek formal EPA approval of their accreditation programs.

9. *Grace period for accreditation reinstatement.* Other comments were received regarding whether there should be a "grace period" during which a person can complete refresher training within 12 months of their certificate expiration date and have their accreditation reinstated. Such a person would not be required to retake the full initial training program for that discipline. Some States expressed support for this approach, while one suggested there should be a penalty for persons who fail to obtain their refresher training on-time (i.e., before the certificate expiration date). EPA believes that the 12–month grace period is appropriate. If a person takes their refresher training too early in their accreditation year, they are penalized through a shortening of what would otherwise be a 12–month period. If they are unable to enroll in a refresher course precisely when they need it, at a location which is convenient, the grace period allows them the opportunity to take the course at a later, more convenient time. During the 12–month grace period, however, it should be emphasized that the person is not accredited, and may not otherwise perform the work that requires accreditation until they complete their refresher training. EPA views this as being a sufficient penalty for not obtaining the required refresher training in a timely manner. Because the 12–month grace period has proven helpful to the industry, and effective in preserving a sizeable, accredited workforce nationwide, the Agency plans to not only continue this procedure, but also to encourage States to adopt it for their programs as well. Consequently, the revised MAP now contains a formal recommendation that State programs take this approach.

10. *Accreditation program adoption by the U.S. Department of Defense.* In commenting on EPA's proposed changes to the MAP, the Department of the Navy noted that it operates its own in-house asbestos training program which it believes complies with the accreditation requirements of the MAP. For this reason, the Navy suggested that EPA might formally review and approve the Navy's training program so that Defense Department employees could become accredited through the Defense program, and therefore not need separate accreditation from a State.

ASHARA requires accreditation for all persons who perform certain types of asbestos-related work in public and commercial buildings, and defines that type of building very broadly. As a result, EPA has concluded that Federal employees who perform inspections or design or conduct response actions in government buildings must be accredited.

Under section 203(l) of TSCA, the Secretary of Defense is authorized to act in lieu of a State Governor with respect to any school operated under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.). This authority allows the Secretary of Defense the opportunity to adopt its own accreditation program no less stringent than the EPA MAP for the purpose of accrediting Defense Department employees performing asbestos-related work in these schools. Although this might be accomplished in cooperation with EPA, the statute does not make the validity of the Defense

Department's plan for schools contingent upon EPA approval.

ASHARA, however, did not extend this accreditation authority given to the Secretary of Defense to cover Defense Department employees performing asbestos-related work in public and commercial buildings.

With respect to the Navy's in-house training courses, the Navy may apply for approval of its training courses in the same manner as any other training provider. This would permit the Navy to accredit any of its employees who might complete these approved training courses. However, because EPA is no longer accepting new courses for review and contingent approval (see 54 FR 38802), only those States with accreditation programs no less stringent than the MAP are in a position to grant approval for such courses.

IV. Economic Impact

The regulatory impact analysis estimates the costs and benefits attributable to this regulation. Because this regulation is an amendment to a current regulation, the costs and benefits are incremental, estimating the additional effect of the regulation with respect to the current regulation.

The costs associated with this regulation are quantified; the benefits are discussed in qualitative terms and are expected to be of significant importance. EPA believes this rule achieves the benefits mandated by Congress at a modest cost. The rule affects training providers, asbestos workers, asbestos abatement and inspection companies, building owners, general building workers and occupants, State governments, and the Federal government.

The benefits associated with this rule involve reductions in exposure to asbestos fibers due to the use of knowledgeable individuals to work with asbestos and the use of safer work practices. The increased training requirements are expected to increase the knowledge of the trained individuals. The population most affected by this regulation is the asbestos professionals engaged in inspections and abatements, of which there are about 200,000 individuals who are required to be trained under this regulation for work in public and commercial buildings. These individuals are expected to benefit the most from this regulation due to the amount of time spent working with ACBM. EPA estimates that there are 0.4 to 1.2 million public and commercial buildings with ACBM, in which there are between 14 and 43 million employees and workers who will gain a greater degree of protection either through the use of trained contractors or their own education. Other employees and building occupants will gain a greater degree of protection through the use of appropriate and correctly applied work practices.

The costs associated with this rule are well documented. Upgrading courses, retaining records, and allowing access to records increase costs for training providers. Most of these costs are passed through in the form of higher charges for the courses that are offered. In the first year, EPA estimates that the overall increase in course costs would be between $2.3 million and $14.2 million. Training provider burden for recordkeeping and allowing access to their records would be $200,000 to $250,000 for the first year.

Training providers estimate that 70 percent of the asbestos-related abatement work done in public and commercial buildings already uses trained individuals. An analysis of the supply and demand of accredited asbestos professionals in each of the four disciplines extended to public and commercial buildings illustrates that the national supply is sufficient to accommodate the anticipated demand. Early estimates of supply and demand for project designers suggested a potential for shortfall, and this conclusion provided a basis for delaying implementation of this rule (57 FR 1913, January 16, 1992).

This rule requires the owners of public and commercial buildings to utilize accredited workers to inspect for ACBM, and to design and carry-out response actions with respect to friable ACBM, unless exempted under the SSSD threshold. EPA believes that most building owners will elect to hire outside contractors rather than train their own people to comply with this requirement, resulting in an annual cost of $2 million to $45 million for the estimated 374,000 to 1.23 million buildings which will be affected.

Both State and Federal governments incur costs due to this rule. For the first year, State governments incur a cost of just under $4 million, while EPA incurs a cost of between $70,000 and $130,000. These costs are due to updating and reviewing State programs and reapproving training courses.

Overall costs for the first year for this rule are estimated to be between $8 million and $64 million. These costs are summarized below. Discounting over a 20–year period at 7 percent yields a present value cost estimate between $33 million and $458 million.

First Year Costs of the MAP Revision Interim Final Rule

(millions 1991 dollars)

Cost Category	Low Estimate	High Estimate
Incremental Course Costs	2.3	14.2
Building Owner Costs over SSSD Threshold	2.2	45
Training Provider Burden	0.2	0.3
State Regulatory Burden	3.6	3.9
EPA Regulatory Burden	0.1	0.1
TOTAL	8.4	63.5

The Agency's complete economic analysis is available in the public record for this rule (OPPTS Docket No. 62107, Log No. B1–001).

V. Administrative Record

EPA has established an administrative record for this rule which has been designated OPPTS Docket No. 62107, and is located at the following address: Environmental Protection Agency, Rm E–G102, 401 M St., SW., Washington, DC 20460. This record is available for review and copying from 8 a.m. to noon and 1 to 4 p.m. Monday through Friday, excluding legal holidays.

The record includes public comments and other information considered by EPA in developing this rule. Any new comments received as a result of this notice will be added to the existing docket for this action.

VI. References

The following references have been included in the record:

(1) USEPA. "Asbestos in Buildings: Simplified Sampling Scheme for Friable Surfacing Materials," EPA/5-85-030a. October 1985.

(2) USEPA. Friable Asbestos-Containing Materials in Schools: Identification and Notification (40 CFR Part 763 Subpart F).

(3) USEPA. National Emission Standards for Hazardous Air Pollutants: Amendments to Asbestos Standard; Final Rule (40 CFR Part 61 Subpart M).

(4) USDOL. OSHA. Occupational Exposure to Asbestos, Final Rule (29 CFR 1926.58).

(5) USEPA. Toxic Substances; Asbestos Abatement Projects; Final Rule (40 CFR Part 763 Subpart G).

(6) USDOL. OSHA. Occupational Safety and Health Standards, Subpart I, Personal Protective Equipment (29 CFR 1910.134).

(7) USEPA. "Managing Asbestos in Place: A Building Owner's Guide to Operations and Maintenance Programs for Asbestos-Containing Materials." EPA/20T-2003. July 1990.

(8) USEPA. "EPA Study of Asbestos-Containing Materials in Public Buildings: A Report to Congress." February 1988.

(9) USEPA. "Interim Rule to Revise the Asbestos Model Accreditation Plan: Draft Regulatory Impact Analysis." July, 1993.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator certifies that this revised rule will not have a significant impact on a substantial number of small businesses. Virtually all of the States already have some type of asbestos certification program now in effect. Nationwide, many thousands of persons are presently completing accredited training programs each year. A discussion of EPA's analysis of the economic consequences of this interim final rule appears in Unit IV. of this notice.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the existing rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and assigned OMB control number 2070–0091. The information collection requirements included in this rule that differ from those previously approved, have been submitted to OMB as an amendment to OMB control number 2070–0091. Upon OMB's approval of this amendment to the existing approval, EPA will publish a notice in the **Federal Register** announcing such approval.

This collection of information requires training providers and States to respond. For training providers, public reporting for this collection of information is estimated to average 42 hours per response. This includes the time for reviewing the regulation, making required changes to training programs, preparing and submitting a self-certification package, maintaining records, and providing access to those records. There is no recordkeeping burden associated with maintaining the records as their maintenance is usual and customary business practice.

For States, public reporting for this collection of information is estimated to average 402 hours per response. This includes the time for reviewing the regulation, comparing the new requirements with the current State program, completing any necessary regulatory or legislative analysis, adopting new legislation or regulations, preparing and submitting an application for program approval, and implementing an updated State program. For States, there is no recordkeeping burden associated with this collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Hazardous substances, Incorporation by reference, Occupational health and safety, Recordkeeping, Schools.

Dated: January 24, 1994.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 763 is amended as follows:

PART 763—[AMENDED]

1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c). Revised subpart E also issued under 15 U.S.C. 2641, 2643, 2646, and 2647.

2. Appendix C to subpart E, is revised to read as follows:

Subpart E—Asbestos-Containing Materials in Schools

* * * * *

Appendix C to Subpart E - Asbestos Model Accreditation Plan

I. Asbestos Model Accreditation Plan for States

The Asbestos Model Accreditation Plan (MAP) for States has eight components:

(A) Definitions
(B) Initial Training
(C) Examinations
(D) Continuing Education
(E) Qualifications
(F) Recordkeeping Requirements for Training Providers
(G) Deaccreditation
(H) Reciprocity

A. Definitions

For purposes of Appendix C:

1. "Friable asbestos-containing material (ACM)" means any material containing more than one percent asbestos which has been applied on ceilings, walls, structural members, piping, duct work, or any other part of a building, which when dry, may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

2. "Friable asbestos-containing building material (ACBM)" means any friable ACM that is in or on interior structural members or other parts of a school or public and commercial building.

3. "Inspection" means an activity undertaken in a school building, or a public and commercial building, to determine the presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material (ACBM) or suspected ACBM, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed ACBM which has been previously identified. The term does not include the following:

a. Periodic surveillance of the type described in 40 CFR 763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed ACBM;

b. Inspections performed by employees or agents of Federal, State, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

c. visual inspections of the type described in 40 CFR 763.90(i) solely for the purpose of determining completion of response actions.

4. "Major fiber release episode" means any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of more than 3 square or linear feet of friable ACBM.

5. "Minor fiber release episode" means any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of 3 square or linear feet or less of friable ACBM.

6. "Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units or detached single-family homes. The term includes, but is not limited to: industrial and office buildings, residential apartment buildings and condominiums of 10 or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

7. "Response action" means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable ACBM.

8. "Small-scale, short-duration activities (SSSD)" are tasks such as, but not limited to:

a. Removal of asbestos-containing insulation on pipes.

b. Removal of small quantities of asbestos-containing insulation on beams or above ceilings.

c. Replacement of an asbestos-containing gasket on a valve.

d. Installation or removal of a small section of drywall.

e. Installation of electrical conduits through or proximate to asbestos-containing materials.

SSSD can be further defined by the following considerations:

f. Removal of small quantities of ACM only if required in the performance of another maintenance activity not intended as asbestos abatement.

g. Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag.

h. Minor repairs to damaged thermal system insulation which do not require removal.

i. Repairs to a piece of asbestos-containing wallboard.

j. Repairs, involving encapsulation, enclosure, or removal, to small amounts of friable ACM only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

B. Initial Training

Training requirements for purposes of accreditation are specified both in terms of required subjects of instruction and in terms of length of training. Each initial training course has a prescribed curriculum and number of days of training. One day of training equals 8 hours, including breaks and lunch. Course instruction must be provided by EPA or State-approved instructors. EPA or State instructor approval shall be based upon a review of the instructor's academic credentials and/or field experience in asbestos abatement.

Beyond the initial training requirements, individual States may wish to consider requiring additional days of training for purposes of supplementing hands-on activities or for reviewing relevant state regulations. States also may wish to consider the relative merits of a worker apprenticeship program. Further, they might consider more stringent minimum qualification standards for the approval of training instructors. EPA recommends that the enrollment in any given course be limited to 25 students so that adequate opportunities exist for individual hands-on experience.

States have the option to provide initial training directly or approve other entities to offer training. The following requirements are for the initial training of persons required to have accreditation under TSCA Title II.

Training requirements for each of the five accredited disciplines are outlined below. Persons in each discipline perform a different job function and distinct role. Inspectors identify and assess the condition of ACBM, or suspect ACBM. Management planners use data gathered by inspectors to assess the degree of hazard posed by ACBM in schools to determine the scope and timing of appropriate response actions needed for schools. Project designers determine how asbestos abatement work should be conducted. Lastly, workers and contractor/supervisors carry out and oversee abatement work. In addition, a recommended training curriculum is also presented for a sixth discipline, which is not federally-accredited, that of "Project Monitor." Each accredited discipline and training curriculum is separate and distinct from the others. A person seeking accreditation in any of the five accredited MAP disciplines cannot attend two or more courses concurrently, but may attend such courses sequentially.

In several instances, initial training courses for a specific discipline (e.g., workers, inspectors) require hands-on training. For asbestos abatement contractor/supervisors and workers, hands-on training should include working with asbestos-substitute materials, fitting and using respirators, use of glovebags, donning protective clothing, and constructing a decontamination unit as well as other abatement work activities.

1. Workers

A person must be accredited as a worker to carry out any of the following activities with respect to friable ACBM in a school or public and commercial building: (1) A response action other than a SSSD activity, (2) a maintenance activity that disturbs friable ACBM other than a SSSD activity, or (3) a response action for a major fiber release episode. All persons seeking accreditation as asbestos abatement workers shall complete at least a 4–day training course as outlined below. The 4–day worker training course shall include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit testing, course review, and an examination. Hands-on training must permit workers to have actual experience performing tasks associated with asbestos abatement. A person who is otherwise accredited as a contractor/supervisor may perform in the role of a worker without possessing separate accreditation as a worker.

Because of cultural diversity associated with the asbestos workforce, EPA recommends that States adopt specific standards for the approval of foreign language courses for abatement workers. EPA further recommends the use of audio-visual materials to complement lectures, where appropriate.

The training course shall adequately address the following topics:

(a) *Physical characteristics of asbestos.* Identification of asbestos, aerodynamic characteristics, typical uses, and physical appearance, and a summary of abatement control options.

(b) *Potential health effects related to asbestos exposure.* The nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency periods for asbestos-related diseases; a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs.

(c) *Employee personal protective equipment.* Classes and characteristics of respirator types; limitations of respirators; proper selection, inspection; donning, use, maintenance, and storage procedures for respirators; methods for field testing of the facepiece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment.

(d) *State-of-the-art work practices.* Proper work practices for asbestos abatement activities, including descriptions of proper construction; maintenance of barriers and decontamination enclosure systems; positioning of warning signs; lock-out of electrical and ventilation systems; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure exhaust ventilation equipment; use of high-efficiency particulate air (HEPA) vacuums; proper clean-up and disposal procedures; work practices for removal, encapsulation, enclosure, and repair of ACM; emergency procedures for sudden releases; potential exposure situations; transport and disposal procedures; and recommended and prohibited work practices.

(e) *Personal hygiene.* Entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area; and potential exposures, such as family exposure.

(f) *Additional safety hazards.* Hazards encountered during abatement activities and how to deal with them, including electrical

hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces.

(g) *Medical monitoring.* OSHA and EPA Worker Protection Rule requirements for physical examinations, including a pulmonary function test, chest X-rays, and a medical history for each employee.

(h) *Air monitoring.* Procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it.

(i) *Relevant Federal, State, and local regulatory requirements, procedures, and standards.* With particular attention directed at relevant EPA, OSHA, and State regulations concerning asbestos abatement workers.

(j) *Establishment of respiratory protection programs.*

(k) *Course review.* A review of key aspects of the training course.

2. Contractor/Supervisors

A person must be accredited as a contractor/supervisor to supervise any of the following activities with respect to friable ACBM in a school or public and commercial building: (1) A response action other than a SSSD activity, (2) a maintenance activity that disturbs friable ACBM other than a SSSD activity, or (3) a response action for a major fiber release episode. All persons seeking accreditation as asbestos abatement contractor/supervisors shall complete at least a 5–day training course as outlined below. The training course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit testing, course review, and a written examination. Hands-on training must permit supervisors to have actual experience performing tasks associated with asbestos abatement.

EPA recommends the use of audiovisual materials to complement lectures, where appropriate.

Asbestos abatement supervisors include those persons who provide supervision and direction to workers performing response actions. Supervisors may include those individuals with the position title of foreman, working foreman, or leadman pursuant to collective bargaining agreements. At least one supervisor is required to be at the worksite at all times while response actions are being conducted. Asbestos workers must have access to accredited supervisors throughout the duration of the project.

The contractor/supervisor training course shall adequately address the following topics:

(a) *The physical characteristics of asbestos and asbestos-containing materials.* Identification of asbestos, aerodynamic characteristics, typical uses, physical appearance, a review of hazard assessment considerations, and a summary of abatement control options.

(b) *Potential health effects related to asbestos exposure.* The nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; synergism between cigarette smoking and asbestos exposure; and latency period for diseases.

(c) *Employee personal protective equipment.* Classes and characteristics of respirator types; limitations of respirators; proper selection, inspection, donning, use, maintenance, and storage procedures for respirators; methods for field testing of the facepiece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; and use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment.

(d) *State-of-the-art work practices.* Proper work practices for asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; lock-out of electrical and ventilation systems; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure exhaust ventilation equipment; use of HEPA vacuums; and proper clean-up and disposal procedures. Work practices for removal, encapsulation, enclosure, and repair of ACM; emergency procedures for unplanned releases; potential exposure situations; transport and disposal procedures; and recommended and prohibited work practices. New abatement-related techniques and methodologies may be discussed.

(e) *Personal hygiene.* Entry and exit procedures for the work area; use of showers; and avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area. Potential exposures, such as family exposure, shall also be included.

(f) *Additional safety hazards.* Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces.

(g) *Medical monitoring.* OSHA and EPA Worker Protection Rule requirements for physical examinations, including a pulmonary function test, chest X-rays and a medical history for each employee.

(h) *Air monitoring.* Procedures to determine airborne concentrations of asbestos fibers, including descriptions of aggressive air sampling, sampling equipment and methods, reasons for air monitoring, types of samples and interpretation of results.

EPA recommends that transmission electron microscopy (TEM) be used for analysis of final air clearance samples, and that sample analyses be performed by laboratories accredited by the National Institute of Standards and Technology's (NIST) National Voluntary Laboratory Accreditation Program (NVLAP).

(i) *Relevant Federal, State, and local regulatory requirements, procedures, and standards, including:*

(i) Requirements of TSCA Title II.

(ii) National Emission Standards for Hazardous Air Pollutants (40 CFR part 61), Subparts A (General Provisions) and M (National Emission Standard for Asbestos).

(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134).

(iv) OSHA Asbestos Construction Standard (29 CFR 1926.58). (v)EPA Worker Protection Rule, (40 CFR part 763, Subpart G).

(j) *Respiratory Protection Programs and Medical Monitoring Programs.*

(k) *Insurance and liability issues.* Contractor issues; worker's compensation coverage and exclusions; third-party liabilities and defenses; insurance coverage and exclusions.

(l) *Recordkeeping for asbestos abatement projects.* Records required by Federal, State, and local regulations; records recommended for legal and insurance purposes.

(m) *Supervisory techniques for asbestos abatement activities.* Supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices.

(n) *Contract specifications.* Discussions of key elements that are included in contract specifications.

(o) *Course review.* A review of key aspects of the training course.

3. Inspector

All persons who inspect for ACBM in schools or public and commercial buildings must be accredited. All persons seeking accreditation as an inspector shall complete at least a 3–day training course as outlined below. The course shall include lectures, demonstrations, 4 hours of hands-on training, individual respirator fit-testing, course review, and a written examination.

EPA recommends the use of audiovisual materials to complement lectures, where appropriate. Hands-on training should include conducting a simulated building walk-through inspection and respirator fit testing. The inspector training course shall adequately address the following topics:

(a) *Background information on asbestos.* Identification of asbestos, and examples and discussion of the uses and locations of asbestos in buildings; physical appearance of asbestos.

(b) *Potential health effects related to asbestos exposure.* The nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency periods for asbestos-related diseases; a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs.

(c) *Functions/qualifications and role of inspectors.* Discussions of prior experience and qualifications for inspectors and management planners; discussions of the functions of an accredited inspector as compared to those of an accredited management planner; discussion of inspection process including inventory of ACM and physical assessment.

(d) *Legal liabilities and defenses.* Responsibilities of the inspector and management planner; a discussion of comprehensive general liability policies, claims-made, and occurrence policies, environmental and pollution liability policy clauses; state liability insurance requirements; bonding and the relationship of insurance availability to bond availability.

(e) *Understanding building systems.* The interrelationship between building systems, including: an overview of common building physical plan layout; heat, ventilation, and air conditioning (HVAC) system types, physical organization, and where asbestos is found on HVAC components; building mechanical systems, their types and organization, and where to look for asbestos on such systems; inspecting electrical systems, including appropriate safety precautions; reading blueprints and as-built drawings.

(f) *Public/employee/building occupant relations.* Notifying employee organizations about the inspection; signs to warn building occupants; tact in dealing with occupants and the press; scheduling of inspections to minimize disruptions; and education of building occupants about actions being taken.

(g) *Pre-inspection planning and review of previous inspection records.* Scheduling the inspection and obtaining access; building record review; identification of probable homogeneous areas from blueprints or as-built drawings; consultation with maintenance or building personnel; review of previous inspection, sampling, and abatement records of a building; the role of the inspector in exclusions for previously performed inspections.

(h) *Inspecting for friable and non-friable ACM and assessing the condition of friable ACM.* Procedures to follow in conducting visual inspections for friable and non-friable ACM; types of building materials that may contain asbestos; touching materials to determine friability; open return air plenums and their importance in HVAC systems; assessing damage, significant damage, potential damage, and potential significant damage; amount of suspected ACM, both in total quantity and as a percentage of the total area; type of damage; accessibility; material's potential for disturbance; known or suspected causes of damage or significant damage; and deterioration as assessment factors.

(i) *Bulk sampling/documentation of asbestos.* Detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials (EPA 560/5-85-030a October 1985)"; techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials; sampling of non-friable materials; techniques for bulk sampling; inspector's sampling and repair equipment; patching or repair of damage from sampling; discussion of polarized light microscopy; choosing an accredited laboratory to analyze bulk samples; quality control and quality assurance procedures. EPA's recommendation that all bulk samples collected from school or public and commercial buildings be analyzed by a laboratory accredited under the NVLAP administered by NIST.

(j) *Inspector respiratory protection and personal protective equipment.* Classes and characteristics of respirator types; limitations of respirators; proper selection, inspection; donning, use, maintenance, and storage procedures for respirators; methods for field testing of the facepiece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing.

(k) *Recordkeeping and writing the inspection report.* Labeling of samples and keying sample identification to sampling location; recommendations on sample labeling; detailing of ACM inventory; photographs of selected sampling areas and examples of ACM condition; information required for inclusion in the management plan required for school buildings under TSCA Title II, section 203 (i)(1). EPA recommends that States develop and require the use of standardized forms for recording the results of inspections in schools or public or commercial buildings, and that the use of these forms be incorporated into the curriculum of training conducted for accreditation.

(l) *Regulatory review.* The following topics should be covered: National Emission Standards for Hazardous Air Pollutants (NESHAP; 40 CFR part 61, Subparts A and M); EPA Worker Protection Rule (40 CFR part 763, Subpart G); OSHA Asbestos Construction Standard (29 CFR 1926.58); OSHA respirator requirements (29 CFR 1910.134); the Friable Asbestos in Schools Rule (40 CFR Part 763, Subpart F); applicable State and local regulations, and differences between Federal and State requirements where they apply, and the effects, if any, on public and nonpublic schools or commercial or public buildings.

(m) *Field trip.* This includes a field exercise, including a walk-through inspection; on-site discussion about information gathering and the determination of sampling locations; on-site practice in physical assessment; classroom discussion of field exercise.

(n) *Course review.* A review of key aspects of the training course.

4. Management Planner

All persons who prepare management plans for schools must be accredited. All persons seeking accreditation as management planners shall complete a 3–day inspector training course as outlined above and a 2–day management planner training course. Possession of current and valid inspector accreditation shall be a prerequisite for admission to the management planner training course. The management planner course shall include lectures, demonstrations, course review, and a written examination.

EPA recommends the use of audiovisual materials to complement lectures, where appropriate.

TSCA Title II does not require accreditation for persons performing the management planner role in public and commercial buildings. Nevertheless, such persons may find this training and accreditation helpful in preparing them to design or administer asbestos operations and maintenance programs for public and commercial buildings.

The management planner training course shall adequately address the following topics:

(a) *Course overview.* The role and responsibilities of the management planner; operations and maintenance programs; setting work priorities; protection of building occupants.

(b) *Evaluation/interpretation of survey results.* Review of TSCA Title II requirements for inspection and management plans for school buildings as given in section 203(i)(1) of TSCA Title II; interpretation of field data and laboratory results; comparison of field inspector's data sheet with laboratory results and site survey.

(c) *Hazard assessment.* Amplification of the difference between physical assessment and hazard assessment; the role of the management planner in hazard assessment; explanation of significant damage, damage, potential damage, and potential significant damage; use of a description (or decision tree) code for assessment of ACM; assessment of friable ACM; relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment.

(d) *Legal implications.* Liability; insurance issues specific to planners; liabilities associated with interim control measures, in-house maintenance, repair, and removal; use of results from previously performed inspections.

(e) *Evaluation and selection of control options.* Overview of encapsulation, enclosure, interim operations and maintenance, and removal; advantages and disadvantages of each method; response actions described via a decision tree or other appropriate method; work practices for each response action; staging and prioritizing of work in both vacant and occupied buildings; the need for containment barriers and decontamination in response actions.

(f) *Role of other professionals.* Use of industrial hygienists, engineers, and architects in developing technical specifications for response actions; any requirements that may exist for architect sign-off of plans; team approach to design of high-quality job specifications.

(g) *Developing an operations and maintenance (O&M) plan.* Purpose of the plan; discussion of applicable EPA guidance documents; what actions should be taken by custodial staff; proper cleaning procedures; steam cleaning and HEPA vacuuming; reducing disturbance of ACM; scheduling O&M for off-hours; rescheduling or canceling renovation in areas with ACM; boiler room maintenance; disposal of ACM; in-house procedures for ACM—bridging and penetrating encapsulants; pipe fittings; metal sleeves; polyvinyl chloride (PVC), canvas, and wet wraps; muslin with straps, fiber mesh cloth; mineral wool, and insulating cement; discussion of employee protection programs and staff training; case study in developing an O&M plan (development, implementation process, and problems that have been experienced).

(h) *Regulatory review.* Focusing on the OSHA Asbestos Construction Standard found at 29 CFR 1926.58; the National Emission Standard for Hazardous Air Pollutants (NESHAP) found at 40 CFR part 61, Subparts

A (General Provisions) and M (National Emission Standard for Asbestos); EPA Worker Protection Rule found at 40 CFR part 763, Subpart G; TSCA Title II; applicable State regulations.

(i) *Recordkeeping for the management planner.* Use of field inspector's data sheet along with laboratory results; on-going recordkeeping as a means to track asbestos disturbance; procedures for recordkeeping. EPA recommends that States require the use of standardized forms for purposes of management plans and incorporate the use of such forms into the initial training course for management planners.

(j) *Assembling and submitting the management plan.* Plan requirements for schools in TSCA Title II section 203(i)(1); the management plan as a planning tool.

(k) *Financing abatement actions.* Economic analysis and cost estimates; development of cost estimates; present costs of abatement versus future operation and maintenance costs; Asbestos School Hazard Abatement Act grants and loans.

(l) *Course review.* A review of key aspects of the training course.

5. Project Designer

A person must be accredited as a project designer to design any of the following activities with respect to friable ACBM in a school or public and commercial building: (1) A response action other than a SSSD maintenance activity, (2) a maintenance activity that disturbs friable ACBM other than a SSSD maintenance activity, or (3) a response action for a major fiber release episode. All persons seeking accreditation as a project designer shall complete at least a minimum 3–day training course as outlined below. The project designer course shall include lectures, demonstrations, a field trip, course review and a written examination.

EPA recommends the use of audiovisual materials to complement lectures, where appropriate.

The abatement project designer training course shall adequately address the following topics:

(a) *Background information on asbestos.* Identification of asbestos; examples and discussion of the uses and locations of asbestos in buildings; physical appearance of asbestos.

(b) *Potential health effects related to asbestos exposure.* Nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency period of asbestos-related diseases; a discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancers of other organs.

(c) *Overview of abatement construction projects.* Abatement as a portion of a renovation project; OSHA requirements for notification of other contractors on a multi-employer site (29 CFR 1926.58).

(d) *Safety system design specifications.* Design, construction, and maintenance of containment barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lock-out; proper working techniques for minimizing fiber release; entry and exit procedures for the work area; use of wet methods; proper techniques for initial cleaning; use of negative-pressure exhaust ventilation equipment; use of HEPA vacuums; proper clean-up and disposal of asbestos; work practices as they apply to encapsulation, enclosure, and repair; use of glove bags and a demonstration of glove bag use.

(e) *Field trip.* A visit to an abatement site or other suitable building site, including on-site discussions of abatement design and building walk-through inspection. Include discussion of rationale for the concept of functional spaces during the walk-through.

(f) *Employee personal protective equipment.* Classes and characteristics of respirator types; limitations of respirators; proper selection, inspection; donning, use, maintenance, and storage procedures for respirators; methods for field testing of the facepiece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing.

(g) *Additional safety hazards.* Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards.

(h) *Fiber aerodynamics and control.* Aerodynamic characteristics of asbestos fibers; importance of proper containment barriers; settling time for asbestos fibers; wet methods in abatement; aggressive air monitoring following abatement; aggressive air movement and negative-pressure exhaust ventilation as a clean-up method.

(i) *Designing abatement solutions.* Discussions of removal, enclosure, and encapsulation methods; asbestos waste disposal.

(j) *Final clearance process.* Discussion of the need for a written sampling rationale for aggressive final air clearance; requirements of a complete visual inspection; and the relationship of the visual inspection to final air clearance.

EPA recommends the use of TEM for analysis of final air clearance samples. These samples should be analyzed by laboratories accredited under the NIST NVLAP.

(k) *Budgeting/cost estimating.* Development of cost estimates; present costs of abatement versus future operation and maintenance costs; setting priorities for abatement jobs to reduce costs.

(l) *Writing abatement specifications.* Preparation of and need for a written project design; means and methods specifications versus performance specifications; design of abatement in occupied buildings; modification of guide specifications for a particular building; worker and building occupant health/medical considerations; replacement of ACM with non-asbestos substitutes.

(m) *Preparing abatement drawings.* Significance and need for drawings, use of as-built drawings as base drawings; use of inspection photographs and on-site reports; methods of preparing abatement drawings; diagramming containment barriers; relationship of drawings to design specifications; particular problems related to abatement drawings.

(n) *Contract preparation and administration.*

(o) *Legal/liabilities/defenses.* Insurance considerations; bonding; hold-harmless clauses; use of abatement contractor's liability insurance; claims made versus occurrence policies.

(p) *Replacement.* Replacement of asbestos with asbestos-free substitutes.

(q) *Role of other consultants.* Development of technical specification sections by industrial hygienists or engineers; the multi-disciplinary team approach to abatement design.

(r) *Occupied buildings.* Special design procedures required in occupied buildings; education of occupants; extra monitoring recommendations; staging of work to minimize occupant exposure; scheduling of renovation to minimize exposure.

(s) *Relevant Federal, State, and local regulatory requirements, procedures and standards, including, but not limited to:*

(i) Requirements of TSCA Title II.

(ii) National Emission Standards for Hazardous Air Pollutants, (40 CFR part 61) subparts A (General Provisions) and M (National Emission Standard for Asbestos).

(iii) OSHA Respirator Standard found at 29 CFR 1910.134.

(iv) EPA Worker Protection Rule found at 40 CFR part 763, subpart G.

(v) OSHA Asbestos Construction Standard found at 29 CFR 1926.58.

(vi) OSHA Hazard Communication Standard found at 29 CFR 1926.59.

(t) *Course review.* A review of key aspects of the training course.

6. Project Monitor

EPA recommends that States adopt training and accreditation requirements for persons seeking to perform work as project monitors. Project monitors observe abatement activities performed by contractors and generally serve as a building owner's representative to ensure that abatement work is completed according to specification and in compliance with all relevant statutes and regulations. They may also perform the vital role of air monitoring for purposes of determining final clearance. EPA recommends that a State seeking to accredit individuals as project monitors consider adopting a minimum 5–day training course covering the topics outlined below. The course outlined below consists of lectures and demonstrations, at least 6 hours of hands-on training, course review, and a written examination. The hands-on training component might be satisfied by having the student simulate participation in or performance of any of the relevant job functions or activities (or by incorporation of the workshop component described in item "n" below of this unit).

EPA recommends that the project monitor training course adequately address the following topics:

(a) *Roles and responsibilities of the project monitor.* Definition and responsibilities of

the project monitor, including regulatory/specification compliance monitoring, air monitoring, conducting visual inspections, and final clearance monitoring.

(b) *Characteristics of asbestos and asbestos-containing materials.* Typical uses of asbestos; physical appearance of asbestos; review of asbestos abatement and control techniques; presentation of the health effects of asbestos exposure, including routes of exposure, dose-response relationships, and latency periods for asbestos-related diseases.

(c) *Federal asbestos regulations.* Overview of pertinent EPA regulations, including: NESHAP, 40 CFR part 61, subparts A and M; AHERA, 40 CFR part 763, subpart E; and the EPA Worker Protection Rule, 40 CFR part 763, subpart G. Overview of pertinent OSHA regulations, including: Construction Industry Standard for Asbestos, 29 CFR 1926.58; Respirator Standard, 29 CFR 1910.134; and the Hazard Communication Standard, 29 CFR 1926.59. Applicable State and local asbestos regulations; regulatory interrelationships.

(d) *Understanding building construction and building systems.* Building construction basics, building physical plan layout; understanding building systems (HVAC, electrical, etc.); layout and organization, where asbestos is likely to be found on building systems; renovations and the effect of asbestos abatement on building systems.

(e) *Asbestos abatement contracts, specifications, and drawings.* Basic provisions of the contract; relationships between principle parties, establishing chain of command; types of specifications, including means and methods, performance, and proprietary and nonproprietary; reading and interpreting records and abatement drawings; discussion of change orders; common enforcement responsibilities and authority of project monitor.

(f) *Response actions and abatement practices.* Pre-work inspections; pre-work considerations, precleaning of the work area, removal of furniture, fixtures, and equipment; shutdown/modification of building systems; construction and maintenance of containment barriers, proper demarcation of work areas; work area entry/exit, hygiene practices; determining the effectiveness of air filtration equipment; techniques for minimizing fiber release, wet methods, continuous cleaning; abatement methods other than removal; abatement area clean-up procedures; waste transport and disposal procedures; contingency planning for emergency response.

(g) *Asbestos abatement equipment.* Typical equipment found on an abatement project; air filtration devices, vacuum systems, negative pressure differential monitoring; HEPA filtration units, theory of filtration, design/construction of HEPA filtration units, qualitative and quantitative performance of HEPA filtration units, sizing the ventilation requirements, location of HEPA filtration units, qualitative and quantitative tests of containment barrier integrity; best available technology.

(h) *Personal protective equipment.* Proper selection of respiratory protection; classes and characteristics of respirator types, limitations of respirators; proper use of other safety equipment, protective clothing selection, use, and proper handling, hard/bump hats, safety shoes; breathing air systems, high pressure v. low pressure, testing for Grade D air, determining proper backup air volumes.

(i) *Air monitoring strategies.* Sampling equipment, sampling pumps (low v. high volume), flow regulating devices (critical and limiting orifices), use of fibrous aerosol monitors on abatement projects; sampling media, types of filters, types of cassettes, filter orientation, storage and shipment of filters; calibration techniques, primary calibration standards, secondary calibration standards, temperature/pressure effects, frequency of calibration, recordkeeping and field work documentation, calculations; air sample analysis, techniques available and limitations of AHERA on their use, transmission electron microscopy (background to sample preparation and analysis, air sample conditions which prohibit analysis, EPA's recommended technique for analysis of final air clearance samples), phase contrast microscopy (background to sample preparation, and AHERA's limits on the use of phase contrast microscopy), what each technique measures; analytical methodologies, AHERA TEM protocol, NIOSH 7400, OSHA reference method (non clearance), EPA recommendation for clearance (TEM); sampling strategies for clearance monitoring, types of air samples (personal breathing zone v. fixed-station area) sampling location and objectives (pre-abatement, during abatement, and clearance monitoring), number of samples to be collected, minimum and maximum air volumes, clearance monitoring (post-visual-inspection) (number of samples required, selection of sampling locations, period of sampling, aggressive sampling, interpretations of sampling results, calculations), quality assurance; special sampling problems, crawl spaces, acceptable samples for laboratory analysis, sampling in occupied buildings (barrier monitoring).

(j) *Safety and health issues other than asbestos.* Confined-space entry, electrical hazards, fire and explosion concerns, ladders and scaffolding, heat stress, air contaminants other than asbestos, fall hazards, hazardous materials on abatement projects.

(k) *Conducting visual inspections.* Inspections during abatement, visual inspections using the ASTM E1368 document; conducting inspections for completeness of removal; discussion of "how clean is clean?"

(l) *Legal responsibilities and liabilities of project monitors.* Specification enforcement capabilities; regulatory enforcement; licensing; powers delegated to project monitors through contract documents.

(m) *Recordkeeping and report writing.* Developing project logs/daily logs (what should be included, who sees them); final report preparation; recordkeeping under Federal regulations.

(n) *Workshops (6 hours spread over 3 days).* Contracts, specifications, and drawings: This workshop could consist of each participant being issued a set of contracts, specifications, and drawings and then being asked to answer questions and make recommendations to a project architect, engineer or to the building owner based on given conditions and these documents.

Air monitoring strategies/asbestos abatement equipment: This workshop could consist of simulated abatement sites for which sampling strategies would have to be developed (i.e., occupied buildings, industrial situations). Through demonstrations and exhibition, the project monitor may also be able to gain a better understanding of the function of various pieces of equipment used on abatement projects (air filtration units, water filtration units, negative pressure monitoring devices, sampling pump calibration devices, etc.).

Conducting visual inspections: This workshop could consist, ideally, of an interactive video in which a participant is "taken through" a work area and asked to make notes of what is seen. A series of questions will be asked which are designed to stimulate a person's recall of the area. This workshop could consist of a series of two or three videos with different site conditions and different degrees of cleanliness.

C. Examinations

1. Each State shall administer a closed book examination or designate other entities such as State-approved providers of training courses to administer the closed-book examination to persons seeking accreditation who have completed an initial training course. Demonstration testing may also be included as part of the examination. A person seeking initial accreditation in a specific discipline must pass the examination for that discipline in order to receive accreditation. For example, a person seeking accreditation as an abatement project designer must pass the State's examination for abatement project designer.

States may develop their own examinations, have providers of training courses develop examinations, or use standardized examinations developed for purposes of accreditation under TSCA Title II. In addition, States may supplement standardized examinations with questions about State regulations. States may obtain commercially developed standardized examinations, develop standardized examinations independently, or do so in cooperation with other States, or with commercial or non-profit providers on a regional or national basis. EPA recommends the use of standardized, scientifically-validated testing instruments, which may be beneficial in terms of both promoting competency and in fostering accreditation reciprocity between States.

Each examination shall adequately cover the topics included in the training course for that discipline. Each person who completes a training course, passes the required examination, and fulfills whatever other requirements the State imposes must receive an accreditation certificate in a specific discipline. Whether a State directly issues accreditation certificates, or authorizes training providers to issue accreditation certificates, each certificate issued to an accredited person must contain the following minimum information:

a. A unique certificate number
b. Name of accredited person

c. Discipline of the training course completed.

d. Dates of the training course.

e. Date of the examination.

f. An expiration date of 1 year after the date upon which the person successfully completed the course and examination.

g. The name, address, and telephone number of the training provider that issued the certificate.

h. A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under TSCA Title II.

States or training providers who reaccredit persons based upon completion of required refresher training must also provide accreditation certificates with all of the above information, except the examination date may be omitted if a State does not require a refresher examination for reaccreditation.

Where a State licenses accredited persons but has authorized training providers to issue accreditation certificates, the State may issue licenses in the form of photo-identification cards. Where this applies, EPA recommends that the State licenses should include all of the same information required for the accreditation certificates. A State may also choose to issue photo-identification cards in addition to the required accreditation certificates.

Accredited persons must have their initial and current accreditation certificates at the location where they are conducting work.

2. The following are the requirements for examination in each discipline:

a. Worker:

i. 50 multiple-choice questions

ii. Passing score: 70 percent correct

b. Contractor/Supervisor:

i. 100 multiple-choice questions

ii. Passing score: 70 percent correct

c. Inspector:

i. 50 Multiple-choice questions

ii. Passing score: 70 percent correct

d. Management Planner:

i. 50 Multiple-choice questions

ii. Passing score: 70 percent correct

e. Project Designer:

i. 100 multiple-choice questions

ii. Passing score: 70 percent correct

D. Continuing Education

For all disciplines, a State's accreditation program shall include annual refresher training as a requirement for reaccreditation as indicated below:

1. Workers: One full day of refresher training.

2. Contractor/Supervisors: One full day of refresher training.

3. Inspectors: One half-day of refresher training.

4. Management Planners: One half-day of inspector refresher training and one half-day of refresher training for management planners.

5. Project Designers: One full day of refresher training.

The refresher courses shall be specific to each discipline. Refresher courses shall be conducted as separate and distinct courses and not combined with any other training during the period of the refresher course. For each discipline, the refresher course shall review and discuss changes in Federal, State, and local regulations, developments in state-of-the-art procedures, and a review of key aspects of the initial training course as determined by the State. After completing the annual refresher course, persons shall have their accreditation extended for an additional year from the date of the refresher course. A State may consider requiring persons to pass reaccreditation examinations at specific intervals (for example, every 3 years).

EPA recommends that States formally establish a 12-month grace period to enable formerly accredited persons with expired certificates to complete refresher training and have their accreditation status reinstated without having to re-take the initial training course.

E. Qualifications

In addition to requiring training and an examination, a State may require candidates for accreditation to meet other qualification and/or experience standards that the State considers appropriate for some or all disciplines. States may choose to consider requiring qualifications similar to the examples outlined below for inspectors, management planners and project designers. States may modify these examples as appropriate. In addition, States may want to include some requirements based on experience in performing a task directly as a part of a job or in an apprenticeship role. They may also wish to consider additional criteria for the approval of training course instructors beyond those prescribed by EPA.

1. Inspectors: Qualifications - possess a high school diploma. States may want to require an Associate's Degree in specific fields (e.g., environmental or physical sciences).

2. Management Planners: Qualifications - Registered architect, engineer, or certified industrial hygienist or related scientific field.

3. Project Designers: Qualifications - registered architect, engineer, or certified industrial hygienist.

4. Asbestos Training Course Instructor: Qualifications - academic credentials and/or field experience in asbestos abatement.

EPA recommends that States prescribe minimum qualification standards for training instructors employed by training providers.

F. Recordkeeping Requirements for Training Providers

All approved providers of accredited asbestos training courses must comply with the following minimum recordkeeping requirements.

1. Training course materials. A training provider must retain copies of all instructional materials used in the delivery of the classroom training such as student manuals, instructor notebooks and handouts.

2. Instructor qualifications. A training provider must retain copies of all instructors' resumes, and the documents approving each instructor issued by either EPA or a State. Instructors must be approved by either EPA or a State before teaching courses for accreditation purposes. A training provider must notify EPA or the State, as appropriate, in advance whenever it changes course instructors. Records must accurately identify the instructors that taught each particular course for each date that a course is offered.

3. Examinations. A training provider must document that each person who receives an accreditation certificate for an initial training course has achieved a passing score on the examination. These records must clearly indicate the date upon which the exam was administered, the training course and discipline for which the exam was given, the name of the person who proctored the exam, a copy of the exam, and the name and test score of each person taking the exam. The topic and dates of the training course must correspond to those listed on that person's accreditation certificate. States may choose to apply these same requirements to examinations for refresher training courses.

4. Accreditation certificates. The training providers or States, whichever issues the accreditation certificate, shall maintain records that document the names of all persons who have been awarded certificates, their certificate numbers, the disciplines for which accreditation was conferred, training and expiration dates, and the training location. The training provider or State shall maintain the records in a manner that allows verification by telephone of the required information.

5. Verification of certificate information. EPA recommends that training providers of refresher training courses confirm that their students possess valid accreditation before granting course admission. EPA further recommends that training providers offering the initial management planner training course verify that students have met the prerequisite of possessing valid inspector accreditation at the time of course admission.

6. Records retention and access. (a) The training provider shall maintain all required records for a minimum of 3 years. The training provider, however, may find it advantageous to retain these records for a longer period of time.

(b) The training provider must allow reasonable access to all of the records required by the MAP, and to any other records which may be required by States for the approval of asbestos training providers or the accreditation of asbestos training courses, to both EPA and to State Agencies, on request. EPA encourages training providers to make this information equally accessible to the general public.

(c) If a training provider ceases to conduct training, the training provider shall notify the approving government body (EPA or the State) and give it the opportunity to take possession of that providers asbestos training records.

G. Deaccreditation

1. States must establish criteria and procedures for deaccrediting persons accredited as workers, contractor/supervisors, inspectors, management planners, and project designers. States must follow their own administrative procedures in pursuing deaccreditation actions. At a minimum, the criteria shall include:

(a) Performing work requiring accreditation at a job site without being in physical possession of initial and current accreditation certificates;

(b) Permitting the duplication or use of one's own accreditation certificate by another;

(c) Performing work for which accreditation has not been received; or

(d) Obtaining accreditation from a training provider that does not have approval to offer training for the particular discipline from either EPA or from a State that has a contractor accreditation plan at least as stringent as the EPA MAP.

EPA may directly pursue deaccreditation actions without reliance on State deaccreditation or enforcement authority or actions. In addition to the above-listed situations, the Administrator may suspend or revoke the accreditation of persons who have been subject to a final order imposing a civil penalty or convicted under section 16 of TSCA, 15 U.S.C. 2615 or 2647, for violations of 40 CFR part 763, or section 113 of the Clean Air Act, 42 U.S.C. 7413, for violations of 40 CFR part 61, subpart M.

2. Any person who performs asbestos work requiring accreditation under section 206(a) of TSCA, 15 U.S.C. 2646(a), without such accreditation is in violation of TSCA. The following persons are not accredited for purposes of section 206(a) of TSCA:

(a) Any person who obtains accreditation through fraudulent representation of training or examination documents;

(b) Any person who obtains training documentation through fraudulent means;

(c) Any person who gains admission to and completes refresher training through fraudulent representation of initial or previous refresher training documentation; or

(d) Any person who obtains accreditation through fraudulent representation of accreditation requirements such as education, training, professional registration, or experience.

H. Reciprocity

EPA recommends that each State establish reciprocal arrangements with other States that have established accreditation programs that meet or exceed the requirements of the MAP. Such arrangements might address cooperation in licensing determinations, the review and approval of training programs and/or instructors, candidate testing and exam administration, curriculum development, policy formulation, compliance monitoring, and the exchange of information and data. The benefits to be derived from these arrangements include a potential cost-savings from the reduction of duplicative activity and the attainment of a more professional accredited workforce as States are able to refine and improve the effectiveness of their programs based upon the experience and methods of other States.

II. EPA Approval Process for State Accreditation Programs

A. States may seek approval for a single discipline or all disciplines as specified in the MAP. For example, a State that currently only requires worker accreditation may receive EPA approval for that discipline alone. EPA encourages States that currently do not have accreditation requirements for all disciplines required under section 206(b)(2) of TSCA, 15 U.S.C. 2646(b)(2), to seek EPA approval for those disciplines the State does accredit. As States establish accreditation requirements for the remaining disciplines, the requested information outlined below should be submitted to EPA as soon as possible. Any State that had an accreditation program approved by EPA under an earlier version of the MAP may follow the same procedures to obtain EPA approval of their accreditation program under this MAP.

B. Partial approval of a State Program for the accreditation of one or more disciplines does not mean that the State is in full compliance with TSCA where the deadline for that State to have adopted a State Plan no less stringent than the MAP has already passed. State Programs which are at least as stringent as the MAP for one or more of the accredited disciplines may, however, accredit persons in those disciplines only.

C. States seeking EPA approval or reapproval of accreditation programs shall submit the following information to the Regional Asbestos Coordinator at their EPA Regional office:

1. A copy of the legislation establishing or upgrading the State's accreditation program (if applicable).

2. A copy of the State's accreditation regulations or revised regulations.

3. A letter to the Regional Asbestos Coordinator that clearly indicates how the State meets the program requirements of this MAP. Addresses for each of the Regional Asbestos Coordinators are shown below:

EPA, Region I, (ATC-111) Asbestos Coordinator, JFK Federal Bldg., Boston, MA 02203-2211, (617) 565-3836.

EPA, Region II, (MS-500), Asbestos Coordinator, 2890 Woodbridge Ave., Edison, NJ 08837-3679, (908) 321-6671.

EPA, Region III, (3AT-33), Asbestos Coordinator, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597-3160.

EPA, Region IV, Asbestos Coordinator, 345 Courtland St., N.E., Atlanta, GA 30365, (404) 347-5014.

EPA, Region V, (SP-14J), Asbestos Coordinator, 77 W. Jackson Blvd., Chicago, IL 60604-3590, (312) 886-6003.

EPA, Region VI, (6T-PT), Asbestos Coordinator, 1445 Ross Ave. Dallas, TX 75202-2744, (214) 655-7244.

EPA, Region VII, (ARTX/ASBS), Asbestos Coordinator, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551-7020.

EPA, Region VIII, (8AT-TS), Asbestos Coordinator, 1 Denver Place, Suite 500 999 - 18th St., Denver, CO 80202-2405, (303) 293-1442.

EPA, Region IX, (A-4-4), Asbestos Coordinator, 75 Hawthorne St., San Francisco, CA 94105, (415) 744-1128.

EPA, Region X, (AT-083), Asbestos Coordinator, 1200 Sixth Ave., Seattle, WA 98101, (206) 553-4762.

EPA maintains a listing of all those States that have applied for and received EPA approval for having accreditation requirements that are at least as stringent as the MAP for one or more disciplines. Any training courses approved by an EPA-approved State Program are considered to be EPA-approved for purposes of accreditation.

III. Approval of Training Courses

Individuals or groups wishing to sponsor training courses for disciplines required to be accredited under section 206(b)(1)(A) of TSCA, 15 U.S.C. 2646(b)(1)(A), may apply for approval from States that have accreditation program requirements that are at least as stringent as this MAP. For a course to receive approval, it must meet the requirements for the course as outlined in this MAP, and any other requirements imposed by the State from which approval is being sought. Courses that have been approved by a State with an accreditation program at least as stringent as this MAP are approved under section 206(a) of TSCA, 15 U.S.C. 2646(a), for that particular State, and also for any other State that does not have an accreditation program as stringent as this MAP.

A. Initial Training Course Approval

A training provider must submit the following minimum information to a State as part of its application for the approval of each training course:

1. The course provider's name, address, and telephone number.

2. A list of any other States that currently approve the training course.

3. The course curriculum.

4. A letter from the provider of the training course that clearly indicates how the course meets the MAP requirements for:

a. Length of training in days.

b. Amount and type of hands-on training.

c. Examination (length, format, and passing score).

d. Topics covered in the course.

5. A copy of all course materials (student manuals, instructor notebooks, handouts, etc.).

6. A detailed statement about the development of the examination used in the course.

7. Names and qualifications of all course instructors. Instructors must have academic and/or field experience in asbestos abatement.

8. A description of and an example of the numbered certificates issued to students who attend the course and pass the examination.

B. Refresher Training Course Approval

The following minimum information is required for approval of refresher training courses by States:

1. The length of training in half-days or days.

2. The topics covered in the course.

3. A copy of all course materials (student manuals, instructor notebooks, handouts, etc.).

4. The names and qualifications of all course instructors. Instructors must have academic and/or field experience in asbestos abatement.

5. A description of and an example of the numbered certificates issued to students who complete the refresher course and pass the examination, if required.

C. Withdrawal of Training Course Approval

States must establish criteria and procedures for suspending or withdrawing approval from accredited training programs. States should follow their own administrative procedures in pursuing actions for suspension or withdrawal of approval of training programs. At a minimum, the criteria shall include:

(1) Misrepresentation of the extent of a training course's approval by a State or EPA;

(2) Failure to submit required information or notifications in a timely manner;

(3) Failure to maintain requisite records;

(4) Falsification of accreditation records, instructor qualifications, or other accreditation information; or

(5) Failure to adhere to the training standards and requirements of the EPA MAP or State Accreditation Program, as appropriate.

In addition to the criteria listed above, EPA may also suspend or withdraw a training course's approval where an approved training course instructor, or other person with supervisory authority over the delivery of training has been found in violation of other asbestos regulations administered by EPA. An administrative or judicial finding of violation, or execution of a consent agreement and order under 40 CFR 22.18, constitutes evidence of a failure to comply with relevant statutes or regulations. States may wish to adopt this criterion modified to include their own asbestos statutes or regulations. EPA may also suspend or withdraw approval of training programs where a training provider has submitted false information as a part of the self-certification required under Unit V.B. of the revised MAP.

Training course providers shall permit representatives of EPA or the State which approved their training courses to attend, evaluate, and monitor any training course without charge. EPA or State compliance inspection staff are not required to give advance notice of their inspections. EPA may suspend or withdraw State or EPA approval of a training course based upon the criteria specified in this Unit III.C.

IV. EPA Procedures for Suspension or Revocation of Accreditation or Training Course Approval.

A. If the Administrator decides to suspend or revoke the accreditation of any person or suspend or withdraw the approval of a training course, the Administrator will notify the affected entity of the following:

1. The grounds upon which the suspension, revocation, or withdrawal is based.

2. The time period during which the suspension, revocation, or withdrawal is effective, whether permanent or otherwise.

3. The conditions, if any, under which the affected entity may receive accreditation or approval in the future.

4. Any additional conditions which the Administrator may impose.

5. The opportunity to request a hearing prior to final Agency action to suspend or revoke accreditation or suspend or withdraw approval.

B. If a hearing is requested by the accredited person or training course provider pursuant to the preceding paragraph, the Administrator will:

1. Notify the affected entity of those assertions of law and fact upon which the action to suspend, revoke, or withdraw is based.

2. Provide the affected entity an opportunity to offer written statements of facts, explanations, comments, and arguments relevant to the proposed action.

3. Provide the affected entity such other procedural opportunities as the Administrator may deem appropriate to ensure a fair and impartial hearing.

4. Appoint an EPA attorney as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific case.

C. The Presiding Officer appointed pursuant to the preceding paragraph shall:

1. Conduct a fair, orderly, and impartial hearing, without unnecessary delay.

2. Consider all relevant evidence, explanation, comment, and argument submitted pursuant to the preceding paragraph.

3. Promptly notify the affected entity of his or her decision and order. Such an order is a final Agency action.

D. If the Administrator determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any person or the approval of any training course provider, the Administrator will:

1. Notify the affected entity of the grounds upon which the emergency suspension is based;

2. Notify the affected entity of the time period during which the emergency suspension is effective.

3. Notify the affected entity of the Administrator's intent to suspend or revoke accreditation or suspend or withdraw training course approval, as appropriate, in accordance with Unit IV.A. above. If such suspension, revocation, or withdrawal notice has not previously been issued, it will be issued at the same time the emergency suspension notice is issued.

E. Any notice, decision, or order issued by the Administrator under this section, and any documents filed by an accredited person or approved training course provider in a hearing under this section, shall be available to the public except as otherwise provided by section 14 of TSCA or by 40 CFR part 2. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or 40 CFR part 2.

V. Implementation Schedule

The various requirements of this MAP become effective in accordance with the following schedules:

A. Requirements applicable to State Programs

1. Each State shall adopt an accreditation plan that is at least as stringent as this MAP within 180 days after the commencement of the first regular session of the legislature of the State that is convened on or after April 4, 1994.

2. If a State has adopted an accreditation plan at least as stringent as this MAP as of April 4, 1994, the State may continue to:

a. Conduct TSCA training pursuant to this MAP.

b. Approve training course providers to conduct training and to issue accreditation that satisfies the requirements for TSCA accreditation under this MAP.

c. Issue accreditation that satisfies the requirements for TSCA accreditation under this MAP.

3. A State that had complied with an earlier version of the MAP, but has not adopted an accreditation plan at least as stringent as this MAP by April 4, 1994, may:

a. Conduct TSCA training which remains in compliance with the requirements of Unit V.B. of this MAP. After such training has been self-certified in accordance with Unit V.B. of this MAP, the State may issue accreditation that satisfies the requirement for TSCA accreditation under this MAP.

b. Sustain its approval for any training course providers to conduct training and issue TSCA accreditation that the State had approved before April 4, 1994, and that remain in compliance with Unit V.B. of this MAP.

c. Issue accreditation pursuant to an earlier version of the MAP that provisionally satisfies the requirement for TSCA accreditation until October 4, 1994.

Such a State may not approve new TSCA training course providers to conduct training or to issue TSCA accreditation that satisfies the requirements of this MAP until the State adopts an accreditation plan that is at least as stringent as this MAP.

4. A State that had complied with an earlier version of the MAP, but fails to adopt a plan as stringent as this MAP by the deadline established in Unit V.A.1., is subject to the following after that deadline date:

a. The State loses any status it may have held as an EPA-approved State for accreditation purposes under section 206 of TSCA, 15 U.S.C. 2646.

b. All training course providers approved by the State lose State approval to conduct training and issue accreditation that satisfies the requirements for TSCA accreditation under this MAP.

c. The State may not:

i. Conduct training for accreditation purposes under section 206 of TSCA, 15 U.S.C. 2646.

ii. Approve training course providers to conduct training or issue accreditation that satisfies the requirements for TSCA accreditation; or

iii. Issue accreditation that satisfies the requirement for TSCA accreditation.

EPA will extend EPA-approval to any training course provider that loses State approval because the State does not comply with the deadline, so long as the provider is in compliance with Unit V.B. of this MAP, and the provider is approved by a State that had complied with an earlier version of the MAP as of the day before the State loses its EPA approval.

5. A State that does not have an accreditation program that satisfies the requirements for TSCA accreditation under either an earlier version of the MAP or this MAP, may not:

a. Conduct training for accreditation purposes under section 206 of TSCA, 15 U.S.C. 2646;

b. Approve training course providers to conduct training or issue accreditation that satisfies the requirements for TSCA accreditation; or

c. Issue accreditation that satisfies the requirement for TSCA accreditation.

B. Requirements applicable to Training Courses and Providers

As of October 4, 1994, an approved training provider must certify to EPA and to any State that has approved the provider for TSCA accreditation, that each of the provider's training courses complies with the requirements of this MAP. The written submission must document in specific detail the changes made to each training course in order to comply with the requirements of this MAP and clearly state that the provider is also in compliance with all other requirements of this MAP, including the new recordkeeping and certificate provisions. Each submission must include the following statement signed by an authorized representative of the training provider: "Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the training described in this submission complies with all applicable requirements of Title II of TSCA, 40 CFR part 763, Appendix C to Subpart E, as revised, and any other applicable Federal, state, or local requirements." A consolidated self-certification submission from each training provider that addresses all of its approved training courses is permissible and encouraged.

The self-certification must be sent via registered mail, to EPA Headquarters at the following address: Attn. Self-Certification Program, Field Programs Branch, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A duplicate copy of the complete submission must also be sent to any States from which approval had been obtained.

The timely receipt of a complete self-certification by EPA and all approving States shall have the effect of extending approval under this MAP to the training courses offered by the submitting provider. If a self-certification is not received by the approving government bodies on or before the due date, the affected training course is not approved under this MAP. Such training providers must then reapply for approval of these training courses pursuant to the procedures outlined in Unit III.

C. Requirements applicable to Accredited Persons.

Persons accredited by a State with an accreditation program no less stringent than an earlier version of the MAP or by an EPA-approved training provider as of April 3, 1994, are accredited in accordance with the requirements of this MAP, and are not required to retake initial training. They must continue to comply with the requirements for annual refresher training in Unit I.D. of the revised MAP.

D. Requirements applicable to Non-Accredited Persons.

In order to perform work requiring accreditation under TSCA Title II, persons who are not accredited by a State with an accreditation program no less stringent than an earlier version of the MAP or by an EPA-approved training provider as of April 3, 1994, must comply with the upgraded training requirements of this MAP by no later than October 4, 1994. Non-accredited persons may obtain initial accreditation on a provisional basis by successfully completing any of the training programs approved under an earlier version of the MAP, and thereby perform work during the first 6 months after this MAP takes effect. However, by October 4, 1994, these persons must have successfully completed an upgraded training program that fully complies with the requirements of this MAP in order to continue to perform work requiring accreditation under section 206 of TSCA, 15 U.S.C. 2646.

[FR Doc. 94-2281 Filed 2-2-94; 8:45 am]

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federal register

Thursday
February 3, 1994

Part IV

Department of Transportation

Federal Highway Administration

49 CFR Part 350

Motor Carrier Safety Assistance Program; Amendment to Distribution Formula; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 350

[FHWA Docket No. MC–94–4]

RIN 2125–AD30

Motor Carrier Safety Assistance Program; Amendment to Distribution Formula

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This document modifies the Motor Carrier Safety Assistance Program (MCSAP) distribution formula to allow States with incompatible intrastate regulations limited participation in only the basic grant program beyond October 1, 1994. It does not change the distribution formula pertaining to those States that have achieved compatibility with respect to both interstate and intrastate transportation. The revised formula is necessary to provide continued funding for States that have not achieved full compatibility in the enforcement of safety regulations applicable to intrastate transportation. Such States will be qualified through formula allocation, rather than suffering absolute loss of eligibility after September 30, 1994.

DATES: This interim final rule is effective March 7, 1994. Comments on this interim final rule must be received on or before April 4, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–94–4, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Taylor, Office of Motor Carrier Safety Field Operations (202) 366–6308, or Ms. Grace Reidy, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t. Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Assistance Program (MCSAP) was first authorized in the Surface Transportation Assistance Act of 1982 (sec. 404, Pub. L. 97–424, 96 Stat. 2097, 2156) and most recently reauthorized by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (sec. 4002, Pub. L. 102–240, 105 Stat. 1914, 2140) which was signed into law on December 19, 1991. The original authorization contained certain conditions States had to meet to be eligible for funding. One such condition required each State to adopt and enforce commercial motor vehicle safety regulations which are compatible with the Federal requirements. Title 49, Code of Federal Regulations (CFR), part 350 was amended by a final rule published in the Federal Register on September 8, 1992 (57 FR 40946), to reflect the mandates of the ISTEA. The amended rule, among other things, defined compatibility, with respect to interstate applicability, to mean identical with the Federal Motor Carrier Safety Regulations (FMCSR) and, with respect to intrastate applicability, to mean within the Tolerance Guidelines. The rule also required interstate compatibility to be achieved not later than October 1, 1993. The FHWA's Tolerance Guidelines, which set the compatibility requirements for intrastate regulations, were included in the new regulation as appendix C to part 350 and future funding under MCSAP was conditioned on achieving intrastate compatibility by October 1, 1994.

With this rulemaking, the FHWA is modifying part 350 to allow partial funding of States notwithstanding intrastate incompatibility. States that have not achieved full intrastate compatibility will receive 50 percent of their basic formula allocation. The formula funds which are withheld from those States which do not have compatible intrastate regulations will be made available to States with compatible comprehensive programs to conduct certain high priority projects that are innovative, successful, cost-effective and cost-efficient. This change is consistent with the legislative direction in the ISTEA to develop an improved distribution formula that both promotes innovative programs and provides incentives to States that increase compatibility, section 4002(k), Public Law 102–240. It rewards those States that have fully compatible interstate and intrastate safety regulations, encourages comprehensive programs, and provides funds for high priority areas. The amendment will also enable the FHWA to maintain a basic commercial motor vehicle inspection program uniformly and universally applied by the States through the continued availability of Federal funds.

The FHWA emphasizes that States must continue to meet the requirement for interstate compatibility, and this interim final rule change will not affect that requirement. The FHWA believes that fully compatible safety and hazardous materials regulations are an essential element of MCSAP. Through the MCSAP, the FHWA, the States, and the Commercial Vehicle Safety Alliance (CVSA) have developed a coordinated, nationwide program of uniform inspections, enforcement, and data collection. This avoids duplication of efforts by the States and promotes compliance by the industry.

The modification made by this interim final rule continues the progress made through MCSAP by permitting States with only intrastate variances to continue to participate in the basic program while providing a strong incentive for them to adopt and enforce compatible intrastate regulations.

Compatible Regulations

A major goal of the MCSAP is to achieve nationwide uniform regulations, laws, and practices. The FHWA has determined that forty-nine States, the District of Columbia, and three territories have adopted compatible rules applicable to interstate commerce. Thirty-six States and territories have adopted compatible intrastate rules. This is indicative of the significant progress that the States and the FHWA have made largely through the MCSAP toward reaching the goal of national uniform commercial motor vehicle safety regulations and enforcement.

Ideally, State commercial motor vehicle laws would exactly mirror Federal regulations. Indeed, the States are encouraged to adopt regulations applicable to both interstate and intrastate commerce which are identical to the Federal regulations. Moreover, the FHWA strongly encourages States to implement a system which allows them to automatically adopt any new Federal regulation, which would preclude any question of future incompatibility and reduce the chance of an interruption in the States' MCSAP funding. The FHWA recognizes, however, that circumstances may exist which make complete adoption by the States difficult. The FHWA has therefore provided the States with limited flexibility, through the Tolerance Guidelines, to address these local issues. In accordance with the ISTEA mandate to issue these guidelines in formal regulations, they were included in the FMCSRs as appendix C to part 350 (57 FR 174, September 8, 1992). The Tolerance Guidelines define the extent to which intrastate regulations can differ from the

FMCSRs, yet still be considered to be compatible. Additional differences and industry exemptions are strongly discouraged. In order to gain FHWA's approval of additional differences, a State must carry a heavy burden of demonstrating that the difference would have little impact on commercial vehicle safety.

Without this modification to part 350, 13 of the States who are currently participating in MCSAP may not qualify for any MCSAP formula grants in fiscal year (FY) 1995. These States (Alaska, Arizona, California, Iowa, Kentucky, Maine, Maryland, Minnesota, Mississippi, Nebraska, Pennsylvania, Washington, and Wisconsin) are allocated a combined total of $16.7 million in Federal funds. These States conducted a combined total of 530,886 of the 1.6 million driver/vehicle inspections done in FY 1992. If the current part 350 requirements are not changed as provided in this rule, these States will no longer receive any MCSAP funding, which provides a significant portion of the resources for them to conduct roadside commercial vehicle and driver inspections, safety and compliance reviews, uniform accident and safety data collection, drug and alcohol abatement programs and other similar activities which have contributed to the significant reduction of commercial vehicle accidents on our nation's highways since MCSAP began in FY 1984. Thus, the FHWA has concluded that total loss of MCSAP funds for these States with some remaining intrastate incompatible rules and regulations would have an adverse impact on commercial motor vehicle safety.

Change to MCSAP Rule, Part 350

This change will allow for distribution of 50 percent of the basic formula allocation to those States which have incompatible intrastate regulations after September 30, 1994. The FHWA has determined that a 50 percent reduction in an incompatible State's basic formula is significant enough to serve as an incentive to the State to enact compatible laws. It is believed that a lesser reduction would not send as strong a message to those States which still have incompatible regulations. Without this change in Part 350, the States with incompatible regulations would not be eligible to receive any Federal MCSAP funding for FY 1995.

The formula funds which are withheld from those States which do not have compatible intrastate regulations will be made available to States with comprehensive programs to conduct certain high priority projects that are innovative, successful, cost-efficient and cost-effective. See § 4002(k) of the ISTEA. States with incompatible intrastate regulations may also request these funds for activities aimed at achieving a comprehensive program.

A comprehensive program is one in which a State has and enforces compatible regulations which pertain to both interstate and intrastate transportation and has a motor carrier safety program which includes roadside inspections; compliance reviews; traffic enforcement; hazardous materials training; drug and alcohol enforcement; a fully-implemented SAFETYNET program, including the National Governors Association accident data collection, and as otherwise defined by FHWA policy. The FHWA believes that States which integrate these activities into their MCSAP have the most effective, cost efficient, and successful commercial vehicle safety programs.

States with comprehensive programs which are applying for these redistributed funds should request these funds for high priority projects. High priority projects are those projects identified by FHWA, in consultation with the States, as having the highest impact on commercial motor vehicle and driver safety. Generally, the FHWA would not support the use of these funds for activities that create one-time personnel hiring which could not be funded in following years. High priority projects will change from year to year to support the growth of the program. Current high priority projects include advanced brake inspection technologies, roadside data collection and communication devices, border enforcement to support the North American Free Trade Agreement, local commercial vehicle enforcement, and drug and alcohol enforcement activities.

Section-by-Section Analysis

Section 350.11 Adopting and Enforcing Compatible Laws and Regulations

This section is amended to correct an error which appears in § 350.11(a). This correction changes the word "applicable" to "inapplicable" in paragraph 350.11(a). This subsection provides the discretion to allow funding notwithstanding the incompatibility of State laws and regulations applicable to intrastate commerce.

Section 350.21 Distribution of Funds

This section is amended to clarify that full basic allocations will only be available to those States which have adopted and are enforcing compatible regulations applicable to both interstate and intrastate commerce. States with incompatible intrastate regulations will be eligible for only 50 percent of the basic formula allocation.

Appendix C to Part 350, Tolerance Guidelines for Adopting Compatible State Rules and Regulations

A paragraph is added to appendix C which allows limited funding for States which have incompatible intrastate regulations.

Rulemaking Analyses and Notices

Administrative Procedure Act

The FHWA has waived prior notice and opportunity for public comment on this rule because it believes that such prior notice and opportunity for public comment, at this time, would be contrary to public interest within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

The final MCSAP rule published on September 8, 1992, indicated that States must achieve compatibility with Federal safety rules within published Tolerance Guidelines by October 1, 1994, the first day of Federal fiscal year 1995. Based on State submissions for Federal fiscal year 1994, the FHWA now believes that 13 States have not yet achieved an acceptable level of compliance for intrastate safety rules and, unless changes are made in such State laws, these States will lose all MCSAP funding on October 1, 1994. Each of these States, however, has achieved full interstate compliance and substantial intrastate compliance. The FHWA has decided that it should revise the amount of MCSAP funds subject to reduction due to a lack of intrastate compatibility to ensure that important safety programs may be continued in the States while providing an incentive to States to achieve further intrastate compatibility with Federal motor carrier safety rules.

By promulgating an interim final rule at this time, the FHWA hopes to provide State legislatures sufficient time to consider amendments to State laws, if necessary. Typically, State legislatures meet during the first three months of the calendar year. While the FHWA notes that the effect of this interim final rule is to lessen the reduction in MCSAP funds States will experience unless they revise their intrastate rules, the FHWA also recognizes that this action will reinforce for the States the consequences of this incompatibility. Concurrent with this action, the FHWA is writing to the 13 affected States explaining the basis for determining that

their intrastate rules do not fall within the Tolerance Guidelines.

Likewise, the FHWA believes that adopting an interim final rule at this time will provide State agencies with adequate time to adjust their programs to accommodate lower MCSAP funding levels before October 1, 1994. If the FHWA delays this action to accept public comment before taking the action, the FHWA believes that States will not have adequate notice before October 1, 1994, to take action to avoid the reduction in MCSAP funds or to plan accordingly.

For these reasons, the FHWA finds that it would be contrary to the public interest to provide notice and opportunity for public comment before issuing this rule. Nevertheless, the FHWA is opening a public docket for this rule and providing 60 days for the receipt of public comment. The FHWA will consider all comments received during this 60 day period in determining whether any revision is necessary to the rule published today.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain significant regulatory action under Executive Order 12866 or a significant regulation under the regulatory polices and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There should be no economic impact on private entities as the action is entirely related to adjusting distribution of funds to public entities to maintain or enhance enforcement of safety regulations. This rule will allow the 13 States with identified intrastate incompatibilities to remain in the MCSAP at a 50 percent funding level. The additional funds made available from these incompatible States will potentially provide increased funding for innovative and high priority projects for the States with comprehensive programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule relates to the requirements States must meet to qualify for Federal funding under the MCSAP. This rule does not impose any direct requirement on small entities that will result in increased economic costs.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. This is a grant program to induce States to adopt compatible safety regulations. The effect of the change adopted today will be to reduce the impact on States that have made substantial efforts to adopt compatible regulations, but which do not fully comply. The action increases the individual discretion of States which would otherwise lose access to Federal funds because of exemptions and other tolerances applicable to wholly intrastate transportation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 350

Grant programs—transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Penalties, Uniformity.

Issued on: January 25, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 350 as follows:

PART 350—[AMENDED]

1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. app. 2301–2304, 2505–2507; 49 U.S.C. 3102; Secs. 401–404, Pub. L. 97–424, 96 Stat. 2097, 2154; Sec. 15(d), Pub. L. 101–500, 104 Stat. 1213, 1219; Secs. 4002 and 4009, Pub. L. 102–240, 105 Stat. 2140; and 49 CFR 1.48.

2. Section 350.11 is amended by revising paragraph (a) to read as follows:

§ 350.11 Adopting and enforcing compatible laws and regulations.

(a) No funds shall be awarded under this part to States that do not adopt and enforce laws and regulations that are compatible with the FMCSR (except as may be determined by the Administrator to be inapplicable) and the FHMR, unless otherwise provided in the Tolerance Guidelines (appendix C to this part).

* * * * *

3. Section 350.21 is amended by adding paragraph (d)(3) to read as follows:

§ 350.21 Distribution of funds.

* * * * *

(d) * * *

(3) Beginning on October 1, 1994, and each October 1 thereafter, more than 50 percent of the basic formula allocation provided for in this section if any such State has adopted and is enforcing compatible regulations applicable to interstate transportation, but has not adopted or is not enforcing compatible regulations applicable to intrastate transportation.

* * * * *

Appendix C [Amended]

4. Appendix C to part 350 is amended by adding a new paragraph (j) under item number 3 to read as follows:

* * * * *

3. Tolerance Guidelines for State Rules and Regulations Where the U.S. Department of Transportation Regulations do not apply

* * * * *

(j) States whose rules and regulations do not meet these guidelines may still be considered qualified for participation under § 350.21. However, their formula allocations for basic grant funds will be subject to the limitations of § 350.21 (d).

[FR Doc. 94–2118 Filed 2–2–94; 8:45 am]

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federal register

Thursday
February 3, 1994

Part V

Department of Education

Department of Labor

Cooperative Demonstration—School-to-Work Opportunities State Implementation Grants Program; Notices

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Cooperative Demonstration—School-to-Work Opportunities State Implementation Grants Program

AGENCIES: Department of Education and Department of Labor.

ACTION: Notice of final priority, selection criteria, and other requirements for Fiscal Year 1994.

SUMMARY: The Secretaries of Education and Labor announce an absolute priority for awards to be made in fiscal year 1994 to enable States to implement plans for statewide School-to-Work Opportunities systems. These systems would offer young Americans access to programs designed to prepare them for a first job in high-skill, high-wage careers, and to increase their opportunities for further education. The Secretaries also announce selection criteria that will be applied in evaluating applications submitted for this competition.

EFFECTIVE DATE: The provisions in this notice take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these provisions, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Marian Banfield, U.S. Department of Education. Telephone: (202) 205–8838. Or Janet Moore, U.S. Department of Labor. Telephone (202) 219–5281. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Departments of Education and Labor have entered into a partnership to establish a national framework within which all States can create statewide School-to-Work Opportunities systems. These systems will help our youth acquire the knowledge, skills, abilities, and labor market information they need to make a smooth and effective transition from school to career-oriented work or to further education or training.

Currently, three-fourths of America's high school students enter the workforce without baccalaureate degrees. Many of them do not possess the basic academic and entry-level occupational skills necessary to succeed in the changing workplace. Unemployment among American youth is intolerably high, and earnings of high school graduates have been falling relative to those with more education. In addition, the American workplace is changing in response to heightened international competition and new technologies, and these forces, which are ultimately beneficial to the Nation, are shrinking the demand for and undermining the earning power of unskilled labor. The School-to-Work Opportunities initiative is the result of a broad-based and growing interest in creating school-to-work transition systems in which young Americans choose and navigate paths to productive and progressively more rewarding roles in the workplace.

Under the School-to-Work Opportunities initiative and the fiscal year 1994 Cooperative Demonstration Program competition, Federal funds will be used as "venture capital" to stimulate State and local creativity in establishing statewide School-to-Work Opportunities systems. To achieve this systemic reform, States may choose to build on and enrich current promising programs such as tech-prep education, career academies, school-to-apprenticeship, cooperative education, youth apprenticeship, and business-education compacts, that can be developed into programs under a School-to-Work Opportunities system. Through the formation of partnerships among secondary and postsecondary educational institutions, private and public employers, labor organizations, government, community groups, parents, and other key groups, communities will take ownership and responsibility for giving American youth access to skills and employment opportunities that will launch them on paths leading to high-skill, high-wage careers. Together, States and localities will take the lead in determining goals and priorities, developing new strategies, and measuring progress.

The Federal role in the School-to-Work Opportunities initiative is important, but limited to the establishment of broad national criteria and a framework within which States create School-to-Work Opportunities systems. The Federal role is to (a) invest in State and local initiatives by providing seed capital; (b) help States and localities learn from each other and from the experience of our international competitors; (c) build a knowledge base of effective school-to-work models, including strategies that meet the needs of disadvantaged youth and that can be implemented successfully in poor communities; and (d) create a national framework through common core criteria and national standards.

School-to-Work Opportunities Systems

The School-to-Work Opportunities initiative provides for a substantial degree of State flexibility and experimentation, but all State systems will share the following common features and basic program components.

The basis of a School-to-Work Opportunities system is (1) the integration of work-based and school-based learning that provides students, to the extent practicable, with broad instruction on all aspects of the industry students are preparing to enter, (2) the integration of occupational and academic learning, and (3) the linking of secondary and postsecondary education.

To build bridges from school-to-work, programs must provide students with an integrated array of learning experiences in the classroom and at the worksite. In order to ensure that students receive these learning experiences, all School-to-Work Opportunities programs must incorporate three basic program components: Work-based learning, school-based learning, and connecting activities. These three core components include—

- Work-based learning that includes providing students with a planned program of job training and experiences relevant to a student's career and leading to the award of a skill certificate, paid work experience, workplace mentoring, and instruction in general workplace competencies.
- School-based learning that includes career awareness and career exploration and counseling, initial selection of a career major by interested students not later than the beginning of the 11th grade, a coherent multi-year sequence of instruction typically beginning no later than the eleventh grade and ending typically after at least one year of postsecondary education tied to high academic and skill standards, which would be developed under the proposed "Goals 2000: Educate America Act," and regularly scheduled evaluations to identify students' academic strengths and weaknesses, academic progress, workplace knowledge, and goals; and
- Connecting activities to ensure coordination between the work-based and school-based learning components of each School-to-Work Opportunities program, which includes matching students with employers' work-based learning opportunities, serving as a liaison among employer, school, teacher, parent, and student participants, providing technical assistance to employers and others in designing work-based learning

components, providing assistance to students who have completed the program in finding appropriate employment, continuing their education, or obtaining additional training, collecting information regarding the outcome of students' participation in the School-to-Work Opportunities program, and linking youth development activities under the School-to-Work Opportunities program with employers' strategies for upgrading the skills of their workers.

School-to-Work Opportunities programs will result in students attaining: (1) A high school diploma or its equivalent, (2) a certificate or diploma recognizing successful completion of one or two years of postsecondary education, if appropriate, and (3) a skill certificate. In addition, these students will be ready to begin a first job on a career track and pursue further education and training.

Grant Program Schedule

The School-to-Work Opportunities initiative is proceeding on two funding tracks—(1) during fiscal year 1994, the initiative is being funded under current legislative authority in the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act); and (2) for fiscal years 1995 through 2002, the Departments plan to fund the initiative under the proposed "School-to-Work Opportunities Act of 1993," which was introduced in Congress on August 5, 1993 as H.R. 2884 and S.1361. The funds will be made available through a grants program. The Department of Education and the Department of Labor are jointly designing and providing for the administration of a State grants program, that consists of—

(a) Development Grants, that are currently being awarded to each State for developing a statewide School-to-Work Opportunities plan; and

(b) Implementation Grants, as described in this notice, awarded competitively to States that can demonstrate substantial ability to begin full-scale operations and implement the statewide plan.

The Secretaries have reserved approximately $250,000 in fiscal year 1994 funds appropriated under the Job Training Partnership Act, to assist the Territories in developing and implementing School-to-Work Opportunities systems. Specific information regarding the availability of these funds will be announced at a later date.

The efforts that take place under both current authority and the proposed legislation are built on a phased-in approach that allows States to "come on line" at different points in time, depending on each State's readiness to undertake broad-scale change and on the availability of funds. Development Grants financed from funds requested by the Department of Labor under the Job Training Partnership Act began to be awarded to States during December, 1993 and are continuing to be awarded in January, 1994 to permit States to begin or enhance planning and developmental efforts to create comprehensive statewide School-to-Work Opportunities systems.

Each Development Grant discussed above is being awarded for a nine-month period. The Secretaries may make additional Development Grants available subsequent to that period to States that do not receive an Implementation Grant under this competition, if those States demonstrate substantial progress towards developing a comprehensive statewide School-to-Work Opportunities plan and if they demonstrate that Federal funds will be used effectively.

Implementation Grants Competition

By this notice, the Secretaries are reserving a portion of the funds appropriated under the Perkins Act in fiscal year 1994 for grants to States to implement statewide School-to-Work Opportunities systems based on State plans. The Secretaries are also establishing selection criteria to be applied in evaluating applications for those funds. The Secretaries are limiting eligibility for implementation grants to States because the Secretaries have concluded that, for this competition, the purposes of 34 CFR 426.4(b)(2) can best be achieved by awarding grants only to State level applicants. Implementation Grants will be funded for up to a five-year period. The Secretaries anticipate that continuation awards will be funded under the School-to-Work Opportunities legislation, once it is enacted. Although there may be certain differences between requirements under the legislation as eventually enacted and grant requirements under this notice, the Secretaries do not expect these to be fundamental.

Grantees under this competition will be required to fund local partnerships to carry out activities under the School-to-Work Opportunities program. The Secretaries intend grantees to fund local partnerships through subgrants, as authorized by the fiscal year 1994 Department of Education Appropriations Act (Pub. L. 103–112).

On October 14, 1993, the Secretaries of the Departments of Education and Labor published a notice of proposed priority and proposed selection criteria for this program in the **Federal Register** (58 FR 53388).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretaries' invitation in the notice of proposed priority, 27 parties submitted comments. An analysis of the comments and of the changes since publication of the notice of proposed priority is published as an appendix to this notice.

Changes in the Notice

In responding to comments received and in developing the final notice, the Secretaries have considered the persuasiveness of the numerous suggestions made by the various commenters. The Secretaries have also considered the House and Senate School-to-Work Opportunities bills currently being considered by Congress. The Secretaries have made some of the changes suggested by commenters because the Secretaries concluded that these changes served to further the purposes of the School-to-Work Opportunities initiative. In addition, in the interest of facilitating grantees' transition from funding under the Cooperative Demonstration authority to funding under the anticipated School-to-Work Opportunities legislation, the Secretaries have also made changes that are consistent with the Cooperative Demonstration authority in the Carl D. Perkins Vocational and Applied Technology Education Act, and, where possible, with the House and Senate bills. Ultimately, although there may be certain differences between the legislation as enacted and the notice, the Secretaries do not expect these to be fundamental. To the extent that any differences exist, the Secretaries plan to provide grantees with appropriate technical assistance and support in the transition from funding under the Cooperative Demonstration authority to systems funding under the anticipated School-to-Work Opportunities legislation.

An analysis of the comments and of the changes in the notice since publication of the proposed priority and selection criteria is published as an appendix to this notice. The following changes made to the notice are described in the order that they appear in the notice; technical and other minor changes are not addressed:

(a) *Definitions*

(1) *"All students"*. Reference to "students who have dropped out of school" has been added to the definition of the term "All students" to clarify that drop-out youth are included within the term and that, therefore, drop-out youth are intended to be served under the School-to-Work Opportunities program.

(2) *"All aspects of the industry"*. The term "Elements of an industry" has been replaced by the term "All aspects of the industry" for the purpose of achieving consistency with the proposed School-to-Work Opportunities legislation, as well as with the Carl D. Perkins Vocational and Applied Technology Education Act, both of which utilize the term "all aspects of the industry." In defining the term, the Secretaries have chosen to apply the definition contained in 34 CFR 400.4(b) of the regulations implementing the Perkins Act. The use of the term "All aspects of the industry" rather than "Elements of the industry" is not intended to affect a change upon this competition or upon the requirements contained in the notice.

(3) *"Career major"*. Paragraph (d) of the definition of "Career major" has been revised to indicate that a student participating in a School-to-Work Opportunities program may satisfy the requirement for a high school diploma by earning the "equivalent" of a high school diploma. The determination of what is the "equivalent" of a high school diploma is left to each State. Paragraph (e) of the definition of "Career major" has been revised by adding the clause "or admission into a degree granting college or university." This change is meant to clarify that admission into a degree-granting college or university is one example of the further education and training to which a career major may lead.

(4) *"Partnership"*. The definition of the term "Partnership" has been revised by adding the words "non-managerial" before the word "employee". The intent is to clarify what type of employee is being referred to in the reference to "labor organizations or employee representatives." The Secretaries consider it likely that managerial employees will be represented within the category of "employers." In addition, the definition of "Partnership" has been revised to include within the illustrative list of "other entities" that may be included in a partnership national trade associations working at the local level; proprietary institutions of higher education, as defined in section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)), which continue to meet the eligibility and certification requirements under section 498 of such Act; and vocational student organizations.

(5) *"Skill certificate"*. The definition of the term "Skill certificate" has been revised to clarify that the term is intended to refer to a portable, industry-recognized credential, that certifies that a student has mastered skills that are benchmarked to high-quality standards. In addition, under the revised definition, prior to the development of skill standards under the proposed Goals 2000: Educate America Act, States are required to develop skill standards under a process described in their plan. Those standards also must be benchmarked to high-quality standards.

(6) *"Workplace mentor"*. The definition of the term "Workplace mentor" has been revised to clarify that a workplace mentor may be either an employee at the workplace in which work-based learning is being provided, or another individual approved by the employer. This revision makes clear that individuals such as special educators, vocational rehabilitation counselors, job coaches, and work-study coordinators, may serve as workplace mentors for all students, including, in particular, students with disabilities. In addition, the definition has been revised to require workplace mentors to possess both the skills and knowledge to be mastered by the student whom they are mentoring in the workplace.

(b) *Absolute Priority*

(1) *Collaboration with appropriate officials (Paragraph (b)(2))*. The priority has been revised to require collaboration with the State educational agency rather than the chief State school officer in the implementation of School-to-Work Opportunities systems. The Secretaries have made this change in order to be consistent with both the House and Senate bills. A corresponding change has been made to paragraph (b)(1) of the selection criterion "Collaboration and Involvement by Key Partners."

(2) *Active and continued involvement of interested parties (paragraph (b)(3))*. The priority has been revised to include a reference to "related services personnel" following the reference to teachers, in the illustrative list of interested parties whose active and continued involvement in States' School-to-Work Opportunities systems may be obtained by States. In addition, in the interest of consistency with the proposed School-to-Work Opportunities legislation that is expected to govern future funding of State School-to-Work Opportunities systems and in response to comments, the Secretaries have added human services agencies, language minority communities, Private Industry Councils established under the Job Training Partnership Act, vocational student organizations, and State or regional cooperative education associations, to the illustrative list of interested parties.

(3) *Coordination of the use of funds (paragraph (b)(4))*. The priority has been revised to include the Job Opportunities Basic Skills Training Program, authorized under part F, title IV, of the Social Security Act (42 U.S.C. 681 *et seq.*), programs of the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*), and programs of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), among the related Federal programs with which States are directed to coordinate their School-to-Work Opportunities systems.

(4) *State training strategies (new paragraph (b)(5))*. The priority has been revised to include a new paragraph (b)(5) requiring that States describe their strategies for providing training for teachers, employers, mentors, counselors, and other parties in the States' School-to-Work Opportunities systems. The Secretaries view this change as being consistent with the intent of the School-to-Work Opportunities initiative which calls for innovation and fundamental change in States' secondary school academic and skill training.

(5) *Ensuring opportunities for young women to participate (paragraph (b)(8))*. The priority has been revised so that, rather than being required simply to describe how States will ensure opportunities for young women to participate in School-to-Work Opportunities programs, States are required to describe the goals and the methods that they will use, such as awareness and outreach, to ensure opportunities for young women to participate in School-to-Work Opportunities programs in a manner that leads to employment in high-performance, high-paying jobs in non-traditional employment.

(6) *Ensuring opportunities leading to employment (paragraph (b)(9))*. The priority has been revised to clarify that States must describe how they will ensure opportunities for low-achieving students, students with disabilities, and drop-outs, to participate in School-to-Work Opportunities programs in a manner that leads to employment in high-performance, high-paying jobs. This revision renders paragraph (b)(9) consistent with paragraph (b)(8), under which States must describe how they will ensure similar opportunities for young women to participate.

(7) *Service to areas with high concentrations of poor and disadvantaged youth (paragraph*

(b)(13)). The priority has been revised to require States to describe: (1) How their systems will be expanded over time to cover all geographic areas and (2) how proposed School-to-Work Opportunities systems will address the needs of students from all communities, including areas with high concentrations of poor and disadvantaged youth. (A parallel change has been made to the "Comprehensive Statewide System" selection criterion.)

(c) *General Program Requirements*

(1) *Basic Program Components.* The "General Program Requirements" section, containing the basic components of the School-to-Work Opportunities program, has been revised to indicate that the high school diploma requirement may be satisfied when a student is awarded the "equivalent" of a high school diploma, as determined under standards developed by the State. (Parallel changes have been made to the definition of the term "career major" and to paragraph (e) of the "Local Programs" criterion.) In addition, paragraph (a)(1) of the "General Program Requirements" section of the priority has been revised to provide that one of the bases of a School-to-Work Opportunities system is the integration of work-based learning and school-based learning "that provides participating students, to the extent practicable, with broad instruction in all aspects of the industry the students are preparing to enter." (As previously noted, a definition of the term "all aspects of the industry" has been provided in the "Definitions" section of this notice.)

(2) *Work-based Learning.* The reference to "Broad instruction in a variety of elements of an industry" has been deleted from the work-based learning component of the "General Program Requirements" section, since reference to broad instruction in all aspects of the industry that students are preparing to enter is now made in paragraph (a)(1) of the basic components section of the priority. (See discussion above in paragraph (c)(1) of this summary).

(3) *School-based Learning.* The school-based learning component has been revised to require, among other stated elements, "career awareness and career exploration and counseling (beginning at the earliest possible age)" in order to help interested students to identify, select, or reconsider, their interests, goals, and career majors, "including those options that may not be traditional for their gender, race, or ethnicity." This change makes clear that promotion of career awareness and exploration of all career options, at an early age, is desirable. The determination of the age at which career awareness, career exploration, and counseling should appropriately begin, is left to the States. And, the section of the school-based learning component containing the requirement for regularly scheduled evaluations has been revised to require those evaluations to identify students' academic strengths, weaknesses, and "academic progress, workplace knowledge, and goals * * *."

(4) *Connecting Activities.* The connecting activities component has been revised to include, among other required elements, "Providing assistance to schools and employers to integrate school-based and work-based learning and integrate academic and occupational learning." In addition, the Secretaries have revised this component to provide an illustrative list of post program outcome information that grantees may include among the types of information they collect. The list includes information on gender, race, ethnicity, socio-economic background, limited-English proficiency, and disability.

(d) *Examples of Statewide Activities.* Reference to "related services personnel" has been added to the list of those individuals in paragraph (c) for whom training could be provided by a grantee under this priority. In addition, the outreach activities in paragraph (b) have been revised to include the clause "stimulating the development of partnerships in poor communities." And, paragraph (h) has been added to provide that States may work with "localities to recruit and retain all students in School-to-Work Opportunities programs, including those from a broad range of backgrounds and circumstances."

(e) *Allocation of Funds to Local Partnerships.* When the notice of proposed priority was published, the Departments did not have the authority to require States to award subgrants to local partnerships with funds awarded under this competition. The 1994 Department of Education Appropriation Act (Pub. L. 103–112), included a provision authorizing grantees of funds under this competition to make subgrants to localities for carrying out School-to-Work Opportunities projects. In light of this new authority, the notice has been modified so that it now requires States receiving School-to-Work Opportunities Implementation grants under this competition to distribute to local partnerships 65 percent of the amounts they receive, as subgrants to localities. Under the pending legislation, we expect that this amount will increase to 75 percent in the second year, and 85 percent in each year thereafter.

(f) *Examples of Activities for Local Partnerships.* New paragraphs (f), (l), (m), and (n) have been added so that included among allowable activities for local partnerships are: providing career exploration and awareness services, counseling and mentoring services, college awareness, and other services to prepare students for the transition from school to work; designing local strategies to provide adequate planning time and staff development activities for teachers, school counselors, and related services personnel; enhancing linkages between after school, weekend, and summer jobs, and opportunities for career exploration and school-based learning; and conducting outreach to all students in a manner that most appropriately meets their needs and the needs of their communities. Redesignated paragraph (g) has been changed to specifically include disabled students in graduation assistance programs.

(g) *Safeguards.* A reference to labor standards has been added to paragraph (d) under "Safeguards," to clarify that all existing labor standards must be applied to School-to-Work Opportunities systems funded under this competition. Under paragraph (d) as revised, States are required to provide all students with adequate and safe equipment and a safe and healthful workplace in conformity with all health, safety, and labor standards of Federal, State, and local law.

(h) *Selection Criteria for Evaluating Applications.* In the discussion of the application review process, the Secretaries have clarified that, among the factors upon which the Secretaries will base their funding decisions are the replicability, sustainability, and innovation of the School-to-Work Opportunities plans described in the States' applications.

(i) *Selection Criteria*

(1) *Comprehensive Statewide System.* In the "Comprehensive Statewide System" criterion, the Secretaries have made a revision to clarify that each State must propose a feasible plan for expanding the School-to-Work Opportunities system so that students in all parts of the State, including communities with high concentrations of poor and disadvantaged youth, will have the opportunity to participate in the State's School-to-Work Opportunities program within a reasonable period of time. This criterion is intended to ensure that State skill standards and methods of skill

assessment are benchmarked to high quality standards and that students receiving skill certificates under the School-to-Work Opportunities program will have the opportunity to enter high-skill, high-wage, employment. Accordingly, the question "Does the State's process for assessing skills reflect the needs of high performance workplaces as well as meet the requirements of broad clusters of related occupations and industries, rather than those of individual jobs or occupations?" has been added to this criterion.

(2) *Involvement by Key Parties.* Under this criterion, States will be evaluated on whether they propose effective and convincing strategies for obtaining the active and continued involvement in the School-to-Work Opportunities program of employers and other interested parties within the State. The criterion has been revised to reflect the Secretaries' intent that each State obtain input, from employers and other key parties, on the State's plans for a proposed School-to-Work Opportunities system, prior to submitting an application for funds under this competition.

(3) *Resources.* The "Resources" selection criterion has been revised to include the question: "Does the applicant limit administrative costs in order to maximize the amounts spent on delivery of services to students enrolled in School-to-Work Opportunities programs?" Accordingly, applications will be reviewed to ascertain, among other things, whether States are planning to limit State and local partnership administrative costs in order to direct as large a portion of the funds received as possible toward providing academic and training services to students participating in their School-to-Work Opportunities programs.

(4) *Student Participation.* The "Student Participation" selection criterion has been revised to include "students with limited-English proficiency and academically talented students." The intent is to be consistent with the definition of the term "All students" (and to further clarify that School-to-Work Opportunities systems are intended to meet the needs of academically talented students).

Cooperative Demonstration—School-To-Work Opportunities Implementation Grants

Definitions

As used in this notice—

"All aspects of an industry" includes, with respect to a particular industry that a student is preparing to enter, planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety, and environmental issues related to that industry;

"All students" means students from a broad range of backgrounds and circumstances, including disadvantaged students, students of diverse racial, ethnic, and cultural backgrounds, students with disabilities, students with limited-English proficiency, students who have dropped out of school, and academically talented students;

"Career major" means a coherent sequence of courses or field of study that prepares a student for a first job and that—

(a) Integrates occupational and academic learning, integrates work-based and school-based learning, and establishes linkages between secondary and postsecondary education;

(b) Prepares the student for employment in broad occupational clusters or industry sectors;

(c) Typically includes at least two years of secondary school and one or two years of postsecondary education;

(d) Results in the award of a high school diploma or its equivalent, a certificate or diploma recognizing successful completion of one or two years of postsecondary education (if appropriate), and a skill certificate; and

(e) May lead to further training, such as entry into a registered apprenticeship program, or admission into a degree-granting college or university.

"Partnership" means a local entity that is responsible for local School-to-Work Opportunities programs and that consists of employers, public secondary and postsecondary educational institutions or agencies, and labor organizations or non-managerial employee representatives, and may include other entities, such as non-profit or community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational education entities, local government agencies, parent organizations and teacher organizations. Private Industry Councils established under the Job Training Partnership Act, national trade associations working at the local levels, proprietary institutions of higher education (as defined in section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)), that continue to meet the eligibility and certification requirements under section 498 of the Higher Education Act of 1965, vocational student organizations, and Federally recognized Indian tribes and Alaska Native villages;

"Skill certificate" means a portable, industry-recognized credential issued by a School-to-Work Opportunities program under an approved plan, that certifies that a student has mastered skills that are benchmarked to high quality standards, such as the skill standards envisioned in the proposed Goals 2000: Educate America Act, except that until such skill standards are developed under the Act, the term "skill certificate" means a credential certifying that a student has mastered skills that are benchmarked to high quality standards, issued under a process described in a State's approved plan;

"Workplace mentor" means an employee at the workplace, or another individual approved by the employer, who possesses the skills and knowledge to be mastered by a student, and who instructs the student, critiques the student's performance, challenges the student to perform well, and works in consultation with classroom teachers and the employer.

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretaries of the Departments of Education and Labor give an absolute preference to applications that—

(a) Are submitted by States; and

(b) Propose to implement statewide School-to-Work Opportunities plans that are included in the applications and that—

(1) Designate the geographical areas to be served by partnerships, which shall, to the extent feasible, reflect local labor market areas;

(2) Describe the manner in which the Governor; the State educational agency; the State agency officials responsible for job training and employment, economic development and postsecondary education; and other appropriate officials, will collaborate in the implementation of the State School-to-Work Opportunities system;

(3) Describe the manner in which the State has obtained and will continue to obtain the active and continued involvement in the statewide School-to-Work Opportunities system of employers and other interested parties such as locally elected officials, secondary and postsecondary educational institutions or agencies, business associations, employees, labor organizations or associations thereof, teachers, related services personnel, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, human services agencies, language minority

communities, Private Industry Councils established under the Job Training Partnership Act, vocational student organizations, State or regional cooperative education associations, and local vocational educational agencies;

(4) Describe the manner in which the School-to-Work Opportunities system will coordinate with or integrate local school-to-work programs, including programs financed from State and private sources with funds available from related Federal programs such as the Adult Education Act (20 U.S.C. 1201 *et seq.*), the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*), the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 *et seq.*), the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), part F of title IV of the Social Security Act (42 U.S.C. 681 *et seq.*) (authorizing the Job Opportunity Basic Skills Training Program), the Goals 2000: Educate America Act, the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*), the National Apprenticeship Act (29 U.S.C. 50 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), and the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*);

(5) Describe the State's strategy for providing training for teachers, employers, mentors, counselors, and other parties involved in the State's School-to-Work Opportunities System;

(6) Describe the resources, including private sector resources, the State intends to employ in maintaining the State's School-to-Work Opportunities system when Federal School-to-Work Opportunities funds are no longer available;

(7) Describe how the State will ensure effective and meaningful opportunities for all students to participate in School-to-Work Opportunities programs;

(8) Describe the goals of the State and the methods the State will use, such as awareness and outreach, to ensure opportunities for young women to participate in School-to-Work Opportunities programs in a manner that leads to employment in high-performance, high-paying jobs, including non-traditional employment;

(9) Describe how the State will ensure opportunities for low-achieving students, students with disabilities, and former students who have dropped out of school to participate in School-to-Work Opportunities programs in a manner that leads to employment in high-performance, high-paying jobs;

(10) Describe the State's process for assessing the skills and knowledge required in career majors, and awarding skill certificates that take into account the work of the proposed National Skill Standards Board and the criteria established under the Goals 2000: Educate America Act;

(11) Describe the performance standards that the State intends to meet;

(12) Designate a fiscal agent to receive and be accountable for School-to-Work Opportunities funds awarded under the program; and

(13) Describe how the State will stimulate and support local School-to-Work Opportunities programs that meet the requirements of this notice and how the State's system will be expanded over time to cover all geographic areas in the State, including those with high concentrations of poor and disadvantaged youth.

General Program Requirements

A School-to-Work Opportunities program under this priority must include the following common features and basic program components:

(a) The basis of the School-to-Work Opportunities system is—

(1) The integration of work-based learning and school-based learning, that provides students, to the extent practicable, with broad instruction in all aspects of the industries students are preparing to enter;

(2) The integration of occupational and academic learning; and

(3) The linking of secondary and postsecondary education.

(b) School-to-Work Opportunities programs will result in students attaining—

(1) A high school diploma, or its equivalent;

(2) A certificate or diploma recognizing successful completion of one or two years of postsecondary education, if appropriate; and

(3) A skill certificate.

(c) School-to-Work Opportunities programs must incorporate three basic program components:

(1) Work-Based Learning, that includes—

- A planned program of job training and work experiences, including pre-employment and employment skills to be mastered at progressively higher levels, that are relevant to a student's career major and lead to the award of a skill certificate;
- Paid work experience;
- Workplace mentoring;
- Instruction in general workplace competencies.

(2) School-Based Learning, that includes—

- Career awareness and career exploration and counseling (beginning at the earliest possible age) in order to help students who may be interested to identify, and select or reconsider, their interests, goals, and career majors, including those options that may not be traditional for their gender, race or ethnicity;
- Initial selection by interested students of a career major not later than the beginning of the 11th grade;
- A program of study designed to meet the same challenging academic standards developed by the State for all students including, where applicable, standards established under the Goals 2000: Educate America Act, and to meet the requirements necessary for a student to earn a skill certificate; and
- Regularly scheduled evaluations to identify academic strengths and weaknesses, academic progress, workplace knowledge and goals of students and the need for additional learning opportunities to master core academic and vocational skills.

(3) Connecting Activities, that include—

- Matching students with employers' work-based learning opportunities;
- Serving as a liaison among the employer, school, teacher, parent, and student and, if appropriate, other community partners;
- Providing technical assistance and services to employers, including small and medium-sized businesses, and others, in designing work-based learning components and counseling and case management services, and in training teachers, workplace mentors, and counselors;
- Providing assistance to students who have completed the program in finding an appropriate job, continuing their education, or entering into an additional training program;
- Providing assistance to schools and employers to integrate school-based and work-based learning and integrate academic and occupational learning;
- Collecting and analyzing information regarding post-program outcomes of students who participate in the School-to-Work Opportunities program which may include, information on gender, race, ethnicity, socio-economic background, limited-English proficiency, and disability; and
- Linking youth development activities under the School-to-Work Opportunities program with employer and industry strategies for upgrading the skills of their workers.

Examples of Statewide Activities

Funds awarded under this program shall be expended by the grantee only for activities undertaken to implement the State's School-to-Work

Opportunities system, which may include—

(a) Recruiting and providing assistance to employers to provide work-based learning for students;

(b) Conducting outreach activities to promote and support collaboration in School-to-Work Opportunities programs by businesses, labor organizations, and other organizations, including stimulating the development of partnerships in poor communities;

(c) Providing training for teachers, employers, workplace mentors, counselors, related services personnel, and others;

(d) Providing labor market information to local partnerships that is useful in determining which high-skill, high-wage occupations are in demand;

(e) Designing or adapting model curricula that can be used to integrate academic and vocational learning, school-based and work-based learning, and secondary and postsecondary education;

(f) Designing or adapting model work-based learning programs and identifying best practices;

(g) Conducting outreach activities and providing technical assistance to other States that are developing or implementing School-to-Work Opportunities systems; and

(h) Working with localities to develop strategies to recruit and retain all students in School-to-Work Opportunities programs, including those from a broad range of backgrounds and circumstances.

Allocation of Funds to Local Partnerships

A grantee under this priority must award subgrants to local partnerships in carrying out activities under the School-to-Work Opportunities program, according to criteria established by the grantee. Subgrants to local partnerships shall total no less than 65 percent of the sums awarded to each State in the first year, 75 percent of the sums awarded to each State in the second year, and 85 percent of such sums in each year thereafter.

A partnership that seeks support in carrying out a local School-to-Work Opportunities program shall submit an application to the State that—

(a) Describes how the local program would include the basic School-to-Work Opportunities program components and otherwise meet the requirements of this notice;

(b) Sets forth measurable program goals and outcomes;

(c) Describes the local strategies and timetables to provide School-to-Work Opportunities program opportunities for all students; and

(d) Provides such other information as the State may require.

Examples of Activities for Local Partnerships

Funds under this program that are used to support partnerships shall be expended only for activities undertaken to carry out School-to-Work programs as provided for in this notice, and such activities may include—

(a) Recruiting and providing assistance to employers, including small and medium-sized businesses, to provide the work-based learning components in the School-to-Work Opportunities program;

(b) Establishing consortia of employers to support the School-to-Work Opportunities program and provide access to jobs related to students' career majors;

(c) Supporting or establishing intermediaries to perform the connecting activities described above in paragraph (c)(3) under "General Program Requirements" and to provide assistance to students in obtaining jobs and further education and training;

(d) Designing or adapting school curricula that can be used to integrate academic and vocational learning, school-based and work-based learning, and secondary and postsecondary education;

(e) Providing training to work-based and school-based staff on new curricula, student assessments, student guidance, and feedback to the school regarding student performance;

(f) Providing career exploration and awareness services, beginning at the earliest possible age, including counseling and mentoring services, college awareness and other services to prepare students for the transition from school to work;

(g) Establishing in schools participating in a School-to-Work Opportunities program a graduation assistance program to assist at-risk, disabled, and low-achieving students in graduating from high school, enrolling in postsecondary education or training, and finding, maintaining, or advancing in jobs;

(h) Conducting or obtaining an in-depth analysis of the local labor market and the generic and specific skill needs of employers to identify high-demand, high-wage careers to target;

(i) Integrating work-based and school-based learning into existing job training programs for youth who have dropped out of school;

(j) Establishing or expanding school-to-apprenticeship programs in cooperation with registered apprenticeship agencies and apprenticeship sponsors;

(k) Assisting participating employers, including small- and medium-size businesses, to identify and train workplace mentors and to develop work-based learning components;

(l) Designing local strategies to provide adequate planning time and staff development activities for teachers, school counselors, and related services personnel;

(m) Enhancing linkages between after school, weekend, and summer jobs, and opportunities for career exploration and school-based learning; and

(n) Conducting outreach to all students in a manner that most appropriately meets their needs and the needs of their communities.

Safeguards

The Secretaries apply the following safeguards to School-to-Work Opportunities programs funded under this priority:

(a) No student shall displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).

(b) No School-to-Work Opportunities program shall impair existing contracts for services or collective bargaining agreements, except that no program under this priority that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

(c) No student shall be employed or job opening filled—

(1) When any other individual is on temporary layoff from the participating employer, with the clear possibility of recall, from the same or any substantially equivalent job; or

(2) When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with a student.

(d) Students shall be provided with adequate and safe equipment and a safe and healthful workplace in conformity with all health, safety, and labor standards of Federal, State, and local law.

(e) Nothing in this priority shall be construed so as to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability.

(f) Funds awarded under this priority shall not be expended for wages of students.

(g) The grantee shall implement and maintain such other safeguards as the Secretaries may deem appropriate in order to ensure that School-to-Work Opportunities participants are afforded adequate supervision by skilled adult workers, or, otherwise, to further the purposes of this program.

An applicant must provide an assurance, in the application, that the foregoing safeguards will be implemented and maintained throughout all program activities.

Selection Criteria for Evaluating Applications

Under the School-to-Work Opportunities Implementation Grant competition, the Secretaries will use the following selection criteria in evaluating applications. The Secretaries will evaluate applications using a two-phase review process. In the first phase of the review process, the Secretaries will use peer reviewers to evaluate applications using the selection criteria and the associated point values. In the second phase, review teams will visit high-ranking States to gain further information and further assess State plans. The second-phase review teams will use the criteria, but not necessarily the associated point values, in their information-gathering and assessment activities. Final funding decisions made by the Secretaries will be based on information gained during the site visits, the ranking of applications during the first-phase review, and such other factors as geographic balance and diversity of program approaches, replicability, sustainability, and innovation.

(a) *Comprehensive Statewide System.* (25 points) Is the School-to-Work Opportunities plan described in the application likely to produce systemic statewide change that will have substantial impact on the preparation of youth for a first job in a high-skill, high-wage career and in increasing their opportunities for further education? Does the plan provide information reflecting the needs of each local labor market area in the designated geographic areas of the State? Does the State propose a feasible plan for expanding the system to ensure that all geographic areas of the State, including communities with high concentrations of poor and disadvantaged youth, will have an opportunity to participate in School-to-Work Opportunities programs within a reasonable period of time? Is the process for assessing skills and issuing skill certificates likely to lead to portable credentials for students and are the skills adequately benchmarked to high quality standards such as those envisioned in the Goals 2000: Educate America Act? Does the State's process for assessing skills reflect the needs of high performance workplaces and meet the requirements of broad clusters of related occupations and industries, rather than those of individual jobs or occupations? Has the State described State and local performance standards that should lead to statewide systemic reform of secondary education?

(b) *Collaboration and Involvement of Key Partners.* (25 points)

(1) *State collaboration:* Is there a vision for implementing a statewide School-to-Work Opportunities system that is shared by the Governor; the State educational agency; the State agency officials responsible for job training and employment, economic development, and postsecondary education; and other appropriate officials? Does the plan substantially demonstrate sufficient commitment and specific involvement of these partners in the statewide implementation? Are the activities appropriate to the partners and likely to produce the desired changes in the way students are prepared for the future? Is there evidence that the State partners have the capacity to support the statewide implementation?

(2) *Involvement by key parties:* Does the State plan include an effective and convincing strategy for obtaining the active and continued involvement of employers and other interested parties such as locally elected officials, secondary and postsecondary educational institutions or agencies, business associations, employees, labor organizations or associations thereof, teachers, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, and local vocational educational agencies in the implementation of statewide systems? Does the strategy recognize the interests of the key parties and utilize their strengths appropriately? Does the plan reflect the input of employers and other key parties?

(c) *Resources.* (10 points) Is the plan for a comprehensive statewide School-to-Work Opportunities system adequately supported by other Federal, State, and local resources? Does the plan effectively integrate State and private education and training resources with other Federal education and training resources? Does the plan limit administrative costs in order to maximize the amounts spent on delivery of services to students enrolled in its School-to-Work Opportunities programs? Is there an effective long-term plan for maintaining the School-to-Work Opportunities system with resources other than Federal School-to-Work Opportunities funds?

(d) *Student Participation.* (15 points) Does the plan propose realistic strategies and programs to ensure that "all students," including young women, minorities, low-achieving students, students with disabilities, students with limited-English proficiency, academically talented students, and former students who have dropped out, have the opportunity to participate in School-to-Work Opportunities programs? Does the strategy recognize barriers to their participation and propose effective ways of overcoming them so that these students are prepared for high-skill, high-wage jobs including, for young women and minorities non-traditional employment?

(e) *Local Programs.* (15 points) Does the plan include an effective strategy for supporting local School-to-Work Opportunities programs that integrate occupational and academic learning, integrate work-based and school-based learning, establish linkages between secondary and postsecondary education, include components for work-based learning, school-based learning and connecting activities, and result in the award of a high school diploma or its equivalent, a certificate or diploma recognizing successful completion of one or two years of postsecondary education (if appropriate), and a skill certificate? Have promising existing programs been considered for adaptation? Have new directions and approaches been planned to ensure that these programs meet the priority? Does the plan show evidence that local School-to-Work Opportunities programs throughout the State, including those that have been funded by the Department of Education or the Department of Labor, are an effective part of a statewide School-to-Work Opportunities system?

(f) *Management Plan.* (10 points) Does the entity submitting the application on behalf of the State have the capacity to manage the implementation of a comprehensive statewide School-to-Work Opportunities system? Does the State's management plan anticipate barriers to statewide implementation and include a system for addressing them as they arise? Does the management plan include a process for incorporating methods to improve or redesign the implementation system based on program outcomes, for example through an evaluation plan? Will the State's performance standards be applied to local partnerships and will the standards be used to evaluate and improve their outcomes? Are key personnel under the plan qualified to

perform the required activities, particularly to maintain the essential partnerships at the State level in a manner sufficient to implement the plan? Will Federal funds under the School-to-Work Opportunities Program grant be used to support partnerships that seek to carry out local School-to-Work Opportunities programs?

Other Factors

In addition to considering the factor of geographic distribution authorized under 34 CFR 426.25 of the Cooperative Demonstration program regulations, prior to making final funding decisions, the Secretaries also will consider as a factor the diversity of approaches to School-to-Work Opportunities proposed by each applicant.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 400 and 426.

Program Authority: 20 U.S.C. 2420a.

(Catalog of Federal Domestic Assistance Number 84.199–H Cooperative Demonstration Program)

Dated: January 25, 1994.

Richard W. Riley,

Secretary of Education.

Robert B. Reich,

Secretary of Labor.

Appendix—Analysis of Comments and Changes

General

Comment: One commenter noted that Congress is currently debating the exact requirements for programs under the proposed School-to-Work Opportunities bill and expressed the belief that States are not immediately prepared to implement Statewide plans and systems. The commenter suggested that it would be preferable to extend the comment period for this notice until after Congress has agreed to the statutory program requirements. The commenter suggested that if the Departments choose to award implementation grants prior to the enactment of School-to-Work Opportunities legislation, they would have the authority to include provisions not contained in the original Administration bill nor, indeed, in the House or the Senate versions, so long as these provisions are consistent with the broad provisions for the Cooperative Demonstration Program authorized under section 420A of the Perkins Act, and 34 CFR 426.4, under which the funds for this competition were appropriated.

Discussion: The Secretaries do not agree that the comment period should be extended until the School-to-Work Opportunities bill is enacted into law by Congress. Indicative of Congressional intent to allow States and localities to begin establishing School-to-Work Opportunities systems, Congress has appropriated funds under existing authority for this fiscal year 1994 competition. The Secretaries wish to award grants as soon as possible after July 1, 1994, when the funds become available, so that the States that compete successfully for those funds may have School-to-Work Opportunities systems operating in the 1994–95 school year. Waiting until enactment to publish a notice inviting applications would inevitably result in significant delays in both awarding funds and initiating programs and activities. At the same time, however, the Secretaries want to make certain that, to the greatest extent practicable, this priority reflects the most current Congressional action to date on the pending legislation. Accordingly, where provisions of the House and Senate bills are identical and differ from the provisions in the proposed notice, and where the House and Senate modifications are consistent with relevant existing authorities, the Secretaries have reflected those modifications in this final notice.

Changes: Changes have been made in the notice to reflect House and Senate modifications to the proposed School-to-Work Opportunities legislation, where those changes are consistent with relevant existing statutory authorities.

Comment: One commenter stated that, because the Federal Government already carries out the function of career education through the National Occupational Information Coordinating Committee, the Secretaries should add a fourth Federal role to the three already delineated in the "Background" section of the notice, "to assist States in the provision of accurate and timely occupational and career development information for purposes of program planning, career guidance and counseling, and individual career exploration, choice and educational planning."

Discussion: The Federal role that is delineated in the "Background" section of the October 14, 1993 notice is a broad characterization of the Federal role envisioned by the Secretaries. The "Background" section is not meant to delineate each of the ways in which the Federal Government might assist States or localities to implement school-to-work systems. Counseling and integrating existing Federal, State, and local programs into comprehensive School-to-Work Opportunities systems is clearly of vital importance to the national School-to-Work Opportunities framework and are embodied in the criteria in this notice as well as in the pending legislation. Although it is not the Secretaries' intent to recount all possible Federal roles here, the Secretaries have added reference to a fourth Federal role, that of creating a national School-to-Work Opportunities framework through common core criteria and national standards. The Secretaries believe that the Federal role referred to by the commenter is implicit in this notice.

Changes: Reference to an additional Federal role, that of creating a national School-to-Work Opportunities framework, has been added to "Background" section of this notice.

Comment: One commenter thought that the final priority should give preference to, and thereby require applications to identify a significant portion of the funds available for local systems for use in high poverty areas.

Discussion: The competition covered by this notice is for State grants only. From grants received under this competition, grantees will distribute a substantial amount of funds to localities, including high poverty areas. Each State must demonstrate in its plan how it will ensure opportunities for "all students" to participate in the program. In addition, each State will be required to describe how its School-to-Work Opportunities system will be expanded to cover all geographic areas, including high poverty areas. The Departments will soon announce a separate direct grant program for local projects located in high poverty areas.

Changes: None.

Comment: One commenter believed that it was unclear from the notice whether there are clear vehicles for the Federal Government to help States and localities learn from each other and from the experience of international competitors, and to build a knowledge base of effective school-to-work models. Therefore, the commenter suggested that the notice be modified to include a separate grant program or a contract to

support the Federal Government in achieving these roles.

Discussion: This notice relates only to the School-to-Work Opportunities State grants competition. However, other funds will be available under the fiscal year 1994 appropriation for Federal level activities, such as technical assistance and research and development, that will help States and localities learn from each other and from the experiences of our international competitors, and that will help States build a knowledge base of effective school-to-work models. The Secretaries do not envision one separate grant or contract for achieving these purposes, but plan to utilize the broad range of vehicles available to them.

Changes: None.

Comment: One commenter noted that very little institutional structure is available in the United States that could manage the partnerships anticipated, and suggested awarding a separate seed grant to a local body not politically tied to any one of the stakeholders for this purpose.

Discussion: The Secretaries believe that States and local communities can best determine how to form and govern the partnerships required under this program. A local partnership can determine for itself which entity in that community is best equipped to manage the partnership. Thus, the Secretaries see no need for the separate direct Federal grants recommended by the commenter.

Changes: None.

Comment: One commenter noted that certificates and credentials in the United States are linked to limited, very defined jobs, such as "radiology," and not to sets of skills that integrate knowledge across an industry. The commenter suggested that the States will need to overhaul their current approach to certification and credentialing if this definition is to be realized.

Discussion: It is the Secretaries' intent that States design School-to-Work Opportunities programs of high quality that will prepare students to become part of a high-performance workforce and that will lead to skill certificates as one of the outcomes of participation. Until there is a system of national skill standards, States are encouraged to apply the highest standards and certifications available. During this period, the Departments will be assisting States in identifying sources and means by which to access existing high quality, industry-recognized standards and accompanying assessment tools, as well as assisting States to collaborate effectively with each other toward the development of high quality skill standards. Once the National Skill Standards Board begins its work, and even before there are skill standards actually endorsed by the Board, States will be required to take the work of the Board into consideration in their development of standards for skill certificates, as is likely to be required under the proposed School-to-Work Opportunities legislation. This is intended to facilitate the development of national, portable credentials and to avoid unnecessary duplication and overlap.

Changes: None.

Subgrants to Local Partnerships

Comment: One commenter recommended that "currently applicable Federal laws" that would allow States to fund local partnerships should be specified in the final notice. The commenter noted that without this specific information, States would be unable to award grant funds to local partnerships.

Discussion: Authority for States to award subgrants to local partnerships is now contained in the 1994 Department of Education Appropriation Act. Accordingly, the notice clearly provides that States receiving School-to-Work Opportunities implementation grants must distribute to local partnerships 65 percent of the amounts received in the first year, 75 percent of the amount received in the second year, and 85 percent of the amount received in each year thereafter.

Changes: The notice has been modified to reflect the subgrant award authority provided in the 1994 Department of Education Appropriation Act.

Peer Review

Comment: Two commenters made suggestions regarding peer reviewers for this competition. One commenter said that the notice should require peer reviewers to represent all the entities that could be members of partnerships at the State level for development and administration of School-to-Work Opportunities systems, including representatives from secondary education, postsecondary education, employment, job training, and economic development. The second commenter recommended that the Secretaries include either individuals with disabilities or members of their families on the review panels.

Discussion: The Secretaries wish to assure the commenters that they plan to select peer reviewers carefully, based on experience, education, training, and expertise in areas relevant to School-to-Work Opportunities systems, and will seek to have as broad a representation as possible on the review panels. However, specific requirements or criteria for the selection of peer reviewers is outside the purpose and scope of this notice.

Changes: None.

Definitions—"All Students"

Comment: One commenter expressed confusion about the meaning of the term "all students," as defined in the October 14, 1993 notice. The commenter recommended that, if the Secretaries intended the term to mean all students rather than a representative sub-sample of students, the definition should be clarified by using the phrase "all students from the broad range of backgrounds" in lieu of the phrase "students from the broad range of backgrounds."

Discussion: The Secretaries intend the definition of "all students" to be broadly inclusive of diverse groups within the Nation's student population, including youth who have dropped out of school. The definition in the notice should not be interpreted as meaning a representative sub-sample of students.

Change: None.

Comment: One commenter noted that the term "all students" does not appear to include out-of-school youth. The commenter stated that excluding dropouts from the definition will result in the exclusion of millions of young people from eligibility to participate in the School-to-Work Opportunities program, including, for example, over one-third of Hispanic youth of high school age.

Discussion: The Secretaries agree with the commenter that the definition of the term "All students" should include youth who are high school dropouts. Similarly, the Secretaries anticipate that, in the final version of the School-to-Work Opportunities legislation, this term will be defined as including students who have dropped out of school.

Changes: The definition of the term "All students" has been changed to include students who have dropped out of school.

Comment: Two commenters expressed concern with the extent to which States would be required to provide for the participation of students from disadvantaged backgrounds in their School-to-Work Opportunities programs. One commenter expressed the view that if "all students" are intended to be successful in the School-to-Work Opportunities initiative, the notice should require or acknowledge the need for considerably more effort

and resources to be devoted to female students and to students from disadvantaged backgrounds. Another commenter felt that the notice should include language emphasizing inclusive projects, that is, that the school-to-work needs of all students should be addressed, not simply the needs of mainstream children without special needs.

Discussion: The definition of the term "All students" in this notice includes a number of population groups with special needs. Among these are disadvantaged students, students with disabilities, students with limited-English proficiency, and former students who have dropped out of school. Moreover, under the "Student Participation" selection criterion, reviewers will assess the extent to which States propose realistic strategies and programs to demonstrate that "all students," including young women, minorities, and low achieving students, have the opportunity to participate in the State's School-to-Work Opportunities program. The notice also requires that State plans address how States will provide opportunities for all students to participate in School-to-Work Opportunities programs. The Secretaries agree, however, that an additional question in the selection criteria would help evaluators assess the extent to which States have also addressed the needs of students from communities with high concentrations of poor and disadvantaged youth. Similarly, the Secretaries have concluded that the priority should include a specific reference to communities with high concentrations of poor and disadvantaged youth. Thus, the Secretaries have revised the notice to require States to indicate specifically in their plans how all students, including women, minorities, low achieving students, and students from communities with high concentrations of poor and disadvantaged youth, will have an opportunity to participate in each State's proposed School-to-Work Opportunities program. The Secretaries have also revised the selection criterion to consider whether States propose feasible plans to include communities with high concentrations of poor and disadvantaged youth in the system.

Changes: Paragraph (b)(13) of the priority and the "Comprehensive Statewide System" selection criterion have been modified to require States to describe in their plans how the States' proposed School-to-Work Opportunities systems will address the needs of students from communities with high concentrations of poor and disadvantaged youth.

Comment: One commenter expressed the view that the current School-to-Work Opportunities initiative deals only with students who are not likely to enroll in college. The commenter suggested that, in order to avoid tracking, clearly articulated 2+1, 2+2, and 2+2+2 programs would be preferable in that they would allow students to exercise a variety of options in both employment and educational environments.

Discussion: The School-to-Work Opportunities program is not intended to be limited to only certain categories of students. The definition of "all students" specifically includes students from a broad range of backgrounds and circumstances, including academically talented students. The notice establishes that career majors would typically include two years of secondary school as well as one or two years of postsecondary education. And, as part of their participation in a School-to-Work Opportunities program, students who are completing their first or second years at the postsecondary level would be prepared to take advantage of options in employment and education, including enrollment in a college or university bestowing a four-year degree. However, the Secretaries agree with the commenter that the definition should be revised to clarify that admission into such a college or university is just one of the options available to participating students to which a career major may lead.

Changes: Paragraph (e) of the definition of "Career major" has been revised by adding the clause "or admission into a degree-granting college or university."

Definitions—All Aspects of an Industry (Previously "Elements of the Industry")

Comment: Two commenters raised questions relative to the definition of "Elements of the industry," as used in the proposed priority notice. One commenter thought that the proposed definition of "Elements of the industry" did not promote the kind of thorough and challenging understanding of all aspects of an industry that are necessary for the School-to-Work Opportunities initiative to be successful in transforming the future American labor force. Instead, the commenter stated a preference for the language in the Carl D. Perkins Vocational and Applied Technology Education Act that requires students to be provided with an understanding of "all aspects of an industry." The second commenter believed that the term "industry" would be poorly understood and that the term should be defined as a collection of employers who share common requirements for human and physical capital, such as the aerospace industry, etc.

Discussion: The Secretaries agree that it is preferable for the term utilized in this notice to be consistent with the term utilized in the Carl D. Perkins Vocational and Applied Technology Education Act. Moreover, the term "All aspects of the industry" also appears in both the Senate and House bills of the School-to Work Opportunities bills currently under consideration by Congress. Therefore, the Secretaries have eliminated the term "Elements of the industry" from the notice, and have substituted the term "All aspects of the industry." However, the Secretaries feel that the term "industry" is clear in the context of this definition, and need not be further defined in this notice.

Changes: The term "Elements of the industry" has been replaced by the term "All aspects of the industry" for the purpose of achieving consistency with the proposed School-to-Work Opportunities legislation, as well as with the Carl D. Perkins Vocational and Applied Technology Education Act. Likewise, the definition of the term "all elements of the industry" has been replaced with the definition of "all aspects of the industry" from the regulations implementing the Perkins Act, at 34 CFR 400.4(b).

Definitions—Career Major

Comment: Two commenters expressed the view that, when coupled with the examples of local partnership activities contained in the notice, the proposed definition of the term "Career major" suggests that the School-to-Work Opportunities initiative will not recognize a high school equivalency diploma as being equivalent to the attainment of an actual high school diploma. These commenters recommended that the definition of a "Career major" be amended to better accommodate out-of-school youth by including both passage of a high school equivalency test and the high school diploma, as acceptable outcomes of participation in School-to-Work Opportunities programs.

Discussion: The Secretaries agree with the commenters that, in part, the attainment of an equivalency diploma by a former student who has participated in, and completed, a School-to-Work Opportunities program, would be an acceptable outcome of such participation.

Changes: The definition of the term "Career major" has been modified to include an "equivalent" certificate. (Parallel changes have been made in the

"General Program Requirements" section of the notice and the "Local Programs" selection criterion.)

Comment: One commenter stated that, while a four-year degree is not the primary focus or goal of the School-to-Work Opportunities initiative, it should be considered an appropriate outcome of participation in a School-to-Work Opportunities program. The commenter felt that course work should be sufficiently rigorous and linked to higher education academic requirements so a student could enter into a four-year academic program following participation in the program. This commenter suggested that the term, "or enrollment in a Bachelor's degree program" be added to the end of the last sentence in the definition of the term "career major."

Discussion: The Secretaries agree with the reasoning provided by the commenter, as discussed above.

Changes: Paragraph (e) of the definition of the term "career major" has been revised by adding the clause "or admission into a degree-granting college or university" so as to clarify that, among other things, completion of a career major may result in admission into a degree-granting college or university.

Comment: One commenter stated that the proposed definition of a "career major" included criteria that would result in an automatic barrier preventing many students with disabilities from benefitting from a School-to-Work Opportunities program. This commenter felt that, in most school systems, students participating in special education programs continue to receive certificates in lieu of a high school diploma and that one or two additional years of training past high school should be an acceptable outcome for many of these learners in lieu of one or two years of postsecondary education. The commenter recommended that the definition of the term "career major" be revised in specific ways to accommodate and encourage the participation of special education students.

Discussion: The Secretaries do not intend to discourage the participation of students with disabilities in State School-to-Work Opportunities programs. Indeed, the School-to-Work Opportunities initiative is intended to serve all students, as has already been discussed. Moreover, the Secretaries agree with the commenter that many States already provide equivalent diplomas or certificates to disabled students. Accordingly, the Secretaries intend to include within the term "equivalent," which has been added to the definition of the term "Career major," certificates provided by States to students with disabilities, that are considered to be equivalent to high school diplomas.

Changes: The definition of "Career major" has been revised to include reference to the "equivalent" of a high school diploma.

Comment: One commenter felt that two years of secondary school and one or two years of post-secondary education would be too great a time commitment for many disadvantaged youth, particularly dropout youth. In the opinion of the commenter, disadvantaged youth with children or disadvantaged youth supporting themselves financially, necessarily require a faster route to employment. Accordingly, the commenter suggested that "one plus one," or a condensed one year program, would better serve their needs.

Discussion: The Secretaries believe that directing disadvantaged youth to abbreviated versions of the high quality programs being provided to all other students would serve only to short-change the disadvantaged students since abbreviated programs would fail to provide participants with the qualifications needed to obtain high-skill, high-wage employment. A high school diploma and, often, one or two years of further education or training are required for students to obtain the kinds of high-skill, high-wage employment envisioned by the School-to-Work Opportunities initiative. It is important to note also that paid work experience—which is a basic program requirement of the School-to-Work Opportunities program's work-based learning component—can also serve to provide some amount of income to participating disadvantaged students. The students are also eligible for additional services under other programs such as the Job Training Partnership Act. Moreover, under this program, States and local partnerships retain the flexibility to develop innovative supportive services for disadvantaged students participating in School-to-Work Opportunities programs geared toward further assisting them to meet their financial and other needs.

Changes: None.

Definitions—Partnership

Comment: Four commenters believed that the participation of community-based organizations (CBOs) should be required in program planning, implementation, and evaluation and, that to accomplish this, the term "Partnership" should be redefined to ensure that CBOs are not left out due to a definition that appears to make their involvement optional. A fifth commenter recommended that the definition of "Partnership" be modified to require the participation of "teachers and related services personnel" as a part of each partnership. The commenter believed that this was necessary to encourage the participation of certain individuals (including rehabilitation counselors, school counselors, psychologists, speech and language pathologists, audiologists, and social workers), who the commenter believes are necessary to the successful participation of students with disabilities in the School-to-Work Opportunities program.

Discussion: The Secretaries agree with the commenters that CBOs will make important contributions to program planning, implementation, and evaluation of School-to-Work Opportunities programs and encourage partnerships to include them. Indeed, the Secretaries believe that most localities will choose to include CBOs because of the value that they are likely to bring to local partnerships. The Secretaries also believe that teachers and related services personnel are likely to be helpful as members of partnerships, and encourage localities to include them to the extent possible. However, the Secretaries are opposed to requiring the participation in all partnerships of either CBOs or teachers and related services personnel, and continue to believe that localities should be allowed to determine the membership in partnerships of entities or groups outside of those whose membership is specifically mandated through the notice's definition of the term "Partnership."

Changes: None.

Comment: One commenter felt that the definition of the term "Partnership" appeared to call for the establishment of a separate local entity instead of a simple collaboration of entities and believed this to be an unnecessary bureaucratic layer.

Discussion: Within the parameters and requirements specified in the notice, States and localities will determine whether partnerships are to be separate local entities or whether they are to consist of simple collaborations of existing entities or groups. The Secretaries do not intend the notice to require another bureaucratic layer or entity.

Changes: None.

Definitions—Skill Certificate

Comment: One commenter believed that the definition of the term "Skill certificate" would impose a barrier for

students with disabilities and would encourage their exclusion from States' School-to-Work Opportunities programs. The commenter suggested that the definition be changed to read, "a portable, industry-recognized credential issued by a program that certifies that a student has mastered skills at levels that, to the extent feasible, are at least as challenging as the standards endorsed by the National Skill Standards Board."

Discussion: As provided for in paragraph (b)(8) of the priority, under the School-to-Work Opportunities program, States are required to describe in their plans how they will ensure that students with disabilities will have opportunities to participate in the States' School-to-Work Opportunities programs. Under the "Student Participation" selection criterion, States are required to propose realistic strategies and programs to ensure that all students, including students with disabilities, have opportunities to participate in their States' School-to-Work Opportunities programs. The clause "ensuring opportunities to participate" is intended to include opportunities to achieve program outcomes, including a skill certificate. While it is very important that individuals with disabilities be provided with the necessary support to ensure that they have the opportunity to participate, the Secretaries do not see the need to modify the definition of the term "Skill certificate" to provide for different skill levels for students with disabilities, than those provided for students without disabilities.

Changes: None.

Definitions—State

Comments: Five commenters noted that the term "State" is not defined in the notice. They suggested that, to avoid confusion, the term "State" should be defined as "each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico."

Discussion: The applicable definition of the term "State" is contained in section 521(33) of the Carl D. Perkins Vocational and Applied Technology Education Act, as implemented by § 400.4(b) of the Perkins regulations.

Changes: None.

Definitions—Workplace Mentor

Changes: None.

Comment: One commenter suggested that the workplace mentor was a critical link within the School-to-Work Opportunities program and was likely to require special training in order to fulfill this role effectively. The commenter viewed the workplace mentor as being a pedagogue with technical knowledge of the employment areas of interest to the students participating in the program. The commenter felt that greater consideration should be given under this program to training of workplace mentors and that this could best be achieved under a separate grant program.

Discussion: Under this priority, State and local partnerships may utilize implementation grant funds to train workplace mentors to ensure that they are knowledgeable in the employment areas that School-to-Work Opportunities students are engaged in and to ensure that the mentors have the necessary knowledge of the work-based curriculum as well as other program policies and practices. Because the Secretaries believe that partnerships should be able to customize programs to meet the needs of local communities, including those of employers and students, they do not believe that a separate grant program is necessary to providing the proper training for workplace mentors.

Changes: None.

Comment: One commenter believed the definition of the term "Workplace mentor" should be changed to include "other individuals approved by the employer" to be included as a workplace mentor so that individuals such as special educators, vocational rehabilitation counselors, job coaches, and work-study coordinators could serve in this capacity for youth with disabilities.

Discussion: The Secretaries agree with the commenter's suggestion.

Changes: The definition of "Workplace mentor" has been modified to include "another individual approved by the employer."

Priority—General

Comments: Two commenters suggested that the Secretaries consider awarding School-to-Work Opportunities grants on a priority basis to: (1) Areas with high levels of unemployment, (2) areas that are impacted by military base closures, and (3) areas that are experiencing cutbacks in defense spending or conversions from defense manufacturing. One of the commenters also suggested that the Secretaries consider awarding grants under this competition based on priorities addressing new and emerging technologies and displaying "complete vertical integration from start to partnering and productive employment placement." Similarly, the second commenter felt that priority should be extended to areas of economic need that can greatly benefit from additional coordinated funding such as that available under the National and Community Service Act. A third commenter felt that priority should be given to communities with high concentrations of poor and disadvantaged youth.

Discussion: The purpose of this award is to provide funds to States to develop statewide School-to-Work Opportunities systems. The State plan must describe how the State will stimulate and support local School-to-Work Opportunities programs and how the State system will be expanded over time to cover all geographic areas in the State including those with high concentrations of poor and disadvantaged youth. States must also distribute a significant portion of their grant funds to local partnerships (65 percent in the first year, 75 percent in the second year, and 85 percent in the third year.) Within this context, States and localities have the flexibility to determine those areas that should receive priority in the establishment of statewide systems and for receipt of funds. While the Secretaries recognize the value of directing School-to-Work Opportunities funds to all of the areas named by the commenters, the Secretaries are opposed to mandating to States that these areas receive funds on a priority basis. Although they have not established a priority for such communities, in response to the third commenter's concerns about communities with high concentrations of poor and disadvantaged youth, the Secretaries have made a change.

Changes: The notice has been modified to include the requirement in both paragraph (b)(13) of the priority and in the "Comprehensive Statewide System" selection criterion that States provide opportunities for participation in their School-to-Work Opportunities programs by students in all parts of each State, including communities with high concentrations of poor and disadvantaged youth.

Priority—Eligibility and Absolute Preference to State Applications

Comment: One commenter stated that making States responsible for School-to-Work Opportunities programs made sense for most populations but not necessarily for migrant or seasonal farmworkers. The commenter felt that what he referred to as "State-run initiatives" sometimes fail to include services for these populations since they are often considered to be a national population. In the commenter's view, even where States are aware that farmworkers live within their boundaries, States often do not have the

special expertise needed to provide these populations with services, or may not be able to serve the full range of the farmworker population. The commenter suggested that the Secretaries encourage States to take the unique needs of farmworker youth into account as States develop their comprehensive statewide School-to-Work Opportunities plans.

Discussion: Secondary students from farmworker and migrant populations are included within the definition of "all students." "All students" is defined to mean "students from a broad range of backgrounds and circumstances, including disadvantaged students, students of diverse racial, ethnic, and cultural backgrounds * * * students with limited-English proficiency * * *." The Secretaries expect migrant and seasonal farmworker youth to be served under the School-to-Work Opportunities Program. In further response to the concerns of the commenter, the Secretaries strongly encourage States with migrant and seasonal farmworker populations, to take the full range of needs of migrant and seasonal farmworker youth into account in developing their plans.

Changes: None.

Comment: One commenter stated that among the applications that should be given absolute preference under this competition are applications that describe: (1) How occupational and career development information available through State Occupational Information Coordinating Committees (SOICCs) and State Employment Security Labor Market Information Units will be used for planning, guidance, and career exploration purposes; and (2) the kinds of career development assistance that will be made available to students, including guidance and counseling, occupational and career information, portfolios, and other educational planning tools, and the manner in which parents and teachers will be brought into the career development aspects of the School-to-Work Opportunities program.

Discussion: With regard to SOICCs and State Employment Security Labor Market Information Units, the Secretaries agree that these could be important sources of information for many States. However, it is thought preferable to allow States the flexibility to determine what are the best sources of information for their specific needs, as well as the best methods of obtaining information important to their programs. In response to the commenter's second point, the Secretaries note that, in paragraph (b)(3) of the priority, States must describe their "procedure for obtaining the active and continued involvement in the statewide School-to-Work Opportunities system of * * * teachers, students, and parents * * *." The Secretaries have concluded that it is preferable to allow each State the flexibility to determine both the specific kinds of career development assistance that will be made available to students and the specific manner in which parents and teachers will be included in the career development aspects of the School-to-Work Opportunities program.

Changes: None.

Comment: One commenter was of the opinion that community colleges are in a good position to assist in linking secondary and postsecondary institutions so as to improve the quality of what the commenter referred to as co-op education programs. The commenter suggested that community colleges should have the opportunity to apply for grants under this program or to be designated as fiscal agents. Further, the commenter suggested that, given the opportunity, community colleges could serve effectively as centralized "School-to-Work Program Centers" and could develop consortium arrangements between high schools and employers.

Discussion: Under this competition, grants will be made to States and each State will designate a fiscal agent. States, in turn, will award subgrants to local partnerships that must include employers, public secondary and postsecondary educational institutions or agencies, and labor organizations or employee representatives. As public postsecondary educational institutions, many community colleges will qualify to participate in partnerships. Community colleges are expected to play an important and active role in School-to-Work Opportunities programs. The matter of which entity will serve as grant recipient or fiscal agent at the State or local level will be decided by States and local partnerships.

Changes: None.

Priority—Comprehensive Statewide System

Comment: One commenter believed that one goal of a School-to-Work Opportunities system is not only to prepare youth for existing jobs but also to enable them to gain access to growing sectors of the economy likely to affect future markets. In the view of the commenter, States should be encouraged to identify and incorporate into their plans those geographical areas that are targeted for economic growth. The commenter further stated that these would include areas that are either receiving Federal, State, or local funds, or receiving funds from all of these sources, for the purpose of stimulating their economies, or areas that have been identified by local governmental or community based agencies for economic activity.

Discussion: States are responsible for developing statewide School-to-Work Opportunities systems. Each State plan must describe how the State will stimulate and support local School-to-Work Opportunities programs in the State, including in areas with high concentrations of poor and disadvantaged youth. As part of this effort, States will, of course, be encouraged to identify and incorporate in their plans, geographic areas that are targeted for economic growth. However, the Secretaries wish to reiterate that States and localities have the flexibility to determine those areas that should receive any priority in the establishment of statewide systems and for the receipt of funds allocated to local partnerships.

Changes: None.

Priority—Collaboration To Implement the State School-to-Work Opportunities System

Comment: One commenter requested that, in paragraph (b)(2) of the priority, the phrase "including State agency officials responsible for special education, vocational rehabilitation, and other transition services" be added following the reference to "other appropriate officials." This commenter believed that all appropriate interagency experts must be included in a collaborative effort toward implementation of each State's School-to-Work Opportunities system.

Discussion: The Secretaries agree that the implementation of each State's School-to-Work Opportunities system must be a collaborative effort involving numerous officials within the State. Systemic change and the provision of appropriate education, training, and employment opportunities for all students cannot be achieved otherwise. However, beyond specifying the involvement of the Governor, the State educational agency, the State agency officials responsible for job training and employment, economic development, and postsecondary education as the priority does the Secretaries have opted not to dictate to States which additional State officials must be included in this collaborative effort. The Secretaries do, however, encourage the collaboration of those officials named by the commenter and, in fact, list "rehabilitation agencies and organizations" among those entities which the State should actively involve in the implementation of statewide systems.

Changes: None.

Priority—Active and Continued Involvement by Interested Parties

Comments: In addition to the interested parties specifically listed in paragraph (b)(3) of the priority as those whose active and continued involvement must be demonstrated in order for an application to be given absolute priority, several commenters suggested that the Secretaries add specific references to the following additional interested parties: Language minority communities, Private Industry Councils, related services personnel (such as vocational rehabilitation counselors and job coaches) following the word "teachers," and human services agencies. One commenter suggested that teachers be moved to the top of the existing list of interested parties in order to indicate that priority will be assigned to applications placing priority upon the cooperation of teachers. Two of the commenters were particularly interested in ensuring the active and continued involvement of those parties that are most critical to the preparation of disabled populations for work and that are essential to the success of disabled youth within the job setting.

Discussion: The Secretaries agree that the active and continued involvement of each of the parties named by the commenters would be entirely appropriate under paragraph (b)(3) of the priority notice, and have revised paragraph (b)(3) accordingly. Specifically, with regard to Private Industry Councils established under the Job Training Partnership Act and with regard to vocational rehabilitation personnel, the Secretaries wish to point out that, in the definition of the term "partnership," these have been specifically named by the Secretaries as parties that may be included within partnerships. In addition to the parties suggested by the commenters, the House and Senate School-to-Work Opportunities bills include vocational student organizations and State or regional cooperative education associations to the list of other interested parties. The Secretaries have added vocational student organizations and State and regional cooperative education associations to paragraph (b)(3) because the Secretaries consider these two entities to be appropriate additions to the list of parties that may be involved in the State School-to-Work Opportunities system, and to ease the transition from funding under this Notice to funding under anticipated School-to-Work Opportunities legislation. In adding the parties suggested by the commenters and the parties in the House and Senate bills, the Secretaries wish to emphasize that the list of other parties in paragraph (b)(3) is purely illustrative of the types of parties whose active and continued participation in a State's School-to-Work system would be appropriate. Thus, while the Secretaries will place an absolute priority upon applications that provide for the active and continued involvement of employers and other interested parties, the Secretaries have chosen to allow each State the flexibility to determine which parties in addition to employers would most effectively assist the State to implement its School-to-Work Opportunities system.

Changes: Section (b)(3) of the final priority has been revised to add to the illustrative list of "other interested parties" the following entities: Related services personnel, human services agencies, language minority communities, Private Industry Councils established under the Job Training Partnership Act, vocational student organizations, and State or regional cooperative education associations.

Comment: One commenter noted that the October 14, 1993 notice contained no mention of how comprehensive high schools would be involved and served under the School-to-Work Opportunities State Implementation Grants program, suggesting the need for clarification on the involvement of comprehensive high schools. The commenter was concerned that changes were needed in order to ensure a viable role in the program not merely for vocational high schools but also for comprehensive high schools and recommended that references to comprehensive high schools be added in paragraph (b)(3) of the priority as well as in other parts of the notice where secondary schools are discussed.

Discussion: The Secretaries fully intend that comprehensive high schools be included in each statewide School-to-Work Opportunities system. In order to implement a comprehensive School-to-Work Opportunities system serving all students, States must ensure opportunities for the participation of all students, including students in comprehensive high schools. Under the School-to-Work Opportunities program and under this priority, it would be unacceptable for only vocational high schools, for example, to be included in a State's implementation plan. However, the Secretaries believe that specific reference to comprehensive high schools is unnecessary, since the term "secondary" encompasses all schools at the secondary level.

Changes: None.

Priority—Education and Training Funds Coordination

Comment: Under paragraph (b)(4) of the priority notice, each State is required to describe how its comprehensive School-to-Work Opportunities system will coordinate the use of funds available from State and private sources with the use of funds available from other Federal programs. One commenter suggested that a clause be added to paragraph (b)(4) requiring the coordination of program activities funded with State and private sources with Federal program funds. The commenter also recommended that the JOBS program be specifically listed.

Discussion: In response to the part of the comment suggesting that a specific reference be added to paragraph (b)(4) to "program activities" supported with State or private funds, the Secretaries have concluded that such a reference is unnecessary. The requirement in that paragraph is for coordination of the use of Federal education and training funds. Included within the requirement articulated in paragraph (b)(4), is the requirement for coordination between the program activities supported with the State and private funds and the program activities supported with funding received under related Federal statutes. The Secretaries agree that the JOBS program should be specifically listed. However, it is important to note that the list of Federal programs in paragraph (b)(4) is not an exhaustive list of related Federal programs with which the use of State and private funds should be coordinated.

Changes: A specific reference to JOBS has been added to paragraph (b)(4) of the priority notice.

Priority—Assessing Skills and Knowledge and Participation in the Goals 2000: Educate America Act

Comment: Several commenters stated that in paragraph (b)(9), which requires States to describe their processes for assessing the skills and knowledge required in career majors and in awarding skills certificates that take into account the work of the proposed National Skill Standards Board and the criteria established under the proposed Goals 2000: Educate America Act, the priority ignores the fact that participation in Goals 2000 is voluntary. One commenter noted that requiring students to receive a skill certificate, as a common feature of the program, assumes that the Goals 2000: Educate America Act, which contains provisions for voluntary industry-based skill standards, will be enacted into law. This

commenter felt that it was inconsistent to require a skill certificate based on enactment of a law which establishes only voluntary, industry-based, skill standards. Accordingly, the commenters suggested that language be added to this paragraph of the priority notice, indicating that the standards or criteria developed under Goals 2000 will only be required if the State is participating in Goals 2000.

Discussion: An important goal of the School-to-Work Opportunities program is to facilitate the employment of young Americans in high-skill, high-wage occupations. Enhancing the ability of job applicants to demonstrate that they possess high quality skills is one way to promote access to such employment. A skill certificate can provide that credential and thereby enhance job prospects. Therefore, the Secretaries believe that this is a crucial component and should be a required outcome. Participation in both the proposed Goals 2000 program and the School-to-Work Opportunities program is entirely voluntary. However, should a State elect to participate, the Secretaries expect that skill certificates will be awarded and that they will take into account the criteria proposed in Goals 2000 as well as the work of the National Skills Standards Board. These criteria are intended to promote the highest quality and most internationally competitive standards possible, in order to facilitate high-wage, high-skill employment.

Changes: None.

Comment: One commenter supported the linking of skill certificates to the National Skill Standards Board and observed that these standards should be the direct goal of each State's efforts, otherwise the skills standards would have little use. This commenter believed that the standards should also be linked to the academic standards of the National Council of Teachers of Math (NCTM) and the National Council of Teachers of Science (NCTS).

Discussion: The Secretaries agree that input from the NCTM and NCTS would be helpful and expect that they will be a part of the process under which academic standards are set.

Changes: None.

Priority—Opportunities for All Students

Comments: Several commenters requested that the Secretaries expand upon the requirement in paragraph (b)(6) of the October 14, 1993 notice (redesignated as (b)(7) of this notice), under which States must describe how they will ensure opportunities for participation for all students. The commenters requested that this be done by requiring States to describe how opportunities will be provided, particularly to low-achieving, disabled, and limited-English proficient students. One commenter noted that paragraph (b)(8) of the October 14, 1993 notice should be redrafted in a manner similar to paragraph (b)(7) of the October 14, 1993 notice, under which States were required to describe the manner in which opportunities will be provided for young women to participate in School-to-Work Opportunities programs in a manner leading to meaningful employment opportunities.

Discussion: The Secretaries intend the requirement in paragraph (b)(8), redesignated as (b)(9) of this notice, relating to low-achieving students, students with disabilities, and dropouts, to provide the same threshold for serving those students, as the language in redesignated paragraph (b)(8) of the final priority, with regard to serving young women. In both paragraphs, the Secretaries intend to seek descriptions from States as to how they will ensure opportunities for students to participate in a meaningful and productive manner in the School-to-Work Opportunities program.

Changes: Paragraph (b)(9) has been changed to require each State to describe how it will ensure opportunities for low achieving students, students with disabilities, and former students who have dropped out of school, to participate in School-to-Work Opportunities programs in a manner that leads to employment in high-performance, high-paying jobs.

Comment: Three commenters requested, that in lieu of describing the manner in which they will "ensure" opportunities for students to participate in the School-to-Work Opportunities programs in paragraphs (b)(6) through (b)(8) of the October 14, 1993 notice, States be required to "increase" opportunities for students to participate in the School-to-Work Opportunities programs.

Discussion: The Secretaries believe that requiring States to ensure opportunities for student participation will naturally result in increased opportunities for participation. Therefore, the Secretaries do not think that the suggested change is necessary.

Changes: None.

Priority—Stakeholder Agreement

Comment: While agreeing that all the items in the notice are critical, one commenter suggested that perhaps the most critical item would be one requiring an agreement among "stakeholders" setting out the results to be achieved by each State's program, how achievement of these results would be determined by stakeholders, and what agency would be entrusted with the review of program results. The commenter suggested that an independent or quasi-independent entity would be best suited for the role of evaluating program success.

Discussion: The Secretaries agree that the ideas presented by the commenter, including that relating to agreements among stakeholders, are good ones. While the Secretaries think that stakeholder agreements may be very effective ways of ensuring meaningful collaboration, they are opposed to making them mandatory. Rather, each State is allowed the flexibility to determine the best way to ensure effective collaboration among the stakeholders and the specific methods and processes by which the progress of its program will be reviewed and assessed.

Changes: None.

General Program Requirements—Common Features

Comment: Two commenters noted that, to allow individuals with disabilities to fully participate in School-to-Work Opportunities programs, the wording on outcomes must be revised to add, after "a high school diploma," the phrase, "or alternative diploma or certificate, as appropriate."

Discussion: The Secretaries seek to establish systems that will result in the attainment of a high school diploma or its equivalent, and a skill certificate, for all students. States have the flexibility to provide support services to students who may require additional resources to obtain the outcomes sought to be achieved under the program. However, as has been discussed above, the Secretaries do not intend to discourage the participation of students with disabilities in State School-to-Work Opportunities programs. Indeed, the School-to-Work Opportunities initiative is intended to serve all students. Accordingly, the Secretaries include within the term "equivalent," which has been added to the definition of "career major," certificates which States may choose to provide to students with disabilities. These are considered to be equivalent to high school diplomas.

Changes: Paragraph (b)(1) of the "General Program Components" section of the priority has been revised to indicate that the high school diploma requirement may be satisfied when a student is awarded the "equivalent" of a high school diploma, as determined under standards by the State.

Program Components—General

Comment: One commenter considered the three program components contained in the October 14, 1993 notice to be inadequate and suggested that a section for support activities like counseling, child care, and transportation, be added. The commenter felt that without these support activities, programs would not attract and hold students who were drop-outs, young parents, or disadvantaged, and whose past lack of success had been due to the unavailability of such services.

Discussion: The program components required in the notice define the core elements of a School-to-Work Opportunities program. The Secretaries recognize that other support services may be necessary to help students fully participate in the program, particularly in the case of disadvantaged or disabled students, and in the case of dropouts. The Secretaries do not, however, wish to render such additional services mandatory in all cases. Moreover, under the notice, States are already required to ensure opportunities for "low-achieving students, students with disabilities, and former students who have dropped out of school to participate in School-to-Work Opportunities programs." This will mean in some cases, providing support services. Also, it is important to note that funds under this competition may be used for support services. In addition, under the priority, States are required to describe how their School-to-Work Opportunities systems will coordinate the use of education and training funds from State and private sources with funds available from related Federal programs. (See paragraph (b)(4) of the priority.)

Changes: None.

Program Components—Work-Based Learning Component

Comment: One commenter recommended that the reference to "instruction in a variety of elements of an industry" in the work-based learning section of program components, be revised to read: "instruction in all aspects of an industry." The commenter further recommended that the revised terminology be added to the requirement for school-based learning.

Discussion: The Secretaries agree with the commenter that the reference to instruction in a variety of elements of an industry should not be a reference that is limited to the work-based component of the program. Further, as previously discussed, there has been a change from use of the term "Elements of the industry" in the October 14, 1993 notice, to use of the term "All aspects of the industry."

Change: The reference to "Broad instruction in a variety of elements of an industry" has been deleted from the work-based learning component of the "General Program Requirements" section. Paragraph (a)(1) of the basic components section has been revised to provide that one of the bases of a School-to-Work Opportunities system is the integration of work-based learning and school-based learning "that provides participating students, to the extent practicable, with broad instruction in all aspects of the industry the students are preparing to enter."

Comment: Several commenters felt that businesses may experience difficulty in providing students with paid work experience, particularly special needs students. One commenter stated that the proposed requirements for work-based learning ignore the basic reality that only a small minority of firms now provide significant training to their own line workers below the management level—let alone to "marginal" high school youth. This commenter believed that the requirements for work-based learning should be expanded to include school-based work placements such as student-run enterprises and school-sponsored community service programs, provided they are of sufficient quality and intensity to otherwise meet the quality requirements of the initiative.

Discussion: The Secretaries believe that paid work experience is an important component of work-based learning in school-to-work programs. Experts consulted in the development of this priority and in the development of the proposed School-to-Work Opportunities legislation strongly believe that jobs with pay increase employment experience for youth, as well as increasing the value and importance of the youth to the employer. Studies confirm these beliefs. Employers have continually pointed out that paying wages is not the primary consideration in their decision of whether or not to participate in school-to-work programs. Small and medium sized businesses have a special incentive since these have been found to be the most significant sources of employment for youth. At the same time, however, the Secretaries agree that it is important for partnerships to have as much flexibility as possible in developing school-to-work programs, including having input on how the paid work experience is constructed. For that reason, the priority provides substantial flexibility. The priority does not require a minimum amount of paid work experience nor does it specify at which point in a program the paid work experience must occur. School-based enterprises can provide the contexts in which the paid work experience requirement could be met. In addition, other non-paid work experience, such as job shadowing or on-the-job training for academic credit, are not precluded by this priority, as complements to the paid work experience component.

Changes: None.

Comment: One commenter believed that the October 14, 1993 notice provides no real incentive for employers, particularly small businesses, to spend their limited funds on hiring students. This commenter would have the Secretaries include at least a sentence describing the potential use of Targeted Jobs Tax Credits, to remind grantees that they can make use of an existing incentive in their implementation of their School-to-Work programs.

Discussion: The Secretaries agree with the commenter that there are many existing vehicles, such as Targeted Jobs Tax Credits, of which employers can avail themselves in the context of their involvement as partners in their States' School-to-Work Opportunities programs. In the course of providing technical assistance to the various States receiving funding under this competition, the Secretaries plan to inform States of any additional Federal resources, programs, or initiatives that may assist States, partnerships, and members of partnerships, in meeting the goals of the initiative and in implementing their State School-to-Work Opportunities plans. Importantly, there may be instances where it will be possible to use Job Training Partnership Act funds to pay for work-based activities for economically disadvantaged students. Funds awarded under this competition may be used by employers to cover costs associated with the work-based learning component of the program—for example, the training of mentors. In addition, States may develop their own package of State incentives to make participation more feasible or attractive for employers.

Finally, the Secretaries strongly believe that the connecting activities authority will provide significant support to participating employers and to education institutions.

Changes: None.

Comment: One commenter believed that the notice should permit students to receive some of their school-based instruction in the workplace, regardless of whether the learning experience is paid or unpaid.

Discussion: Under the School-to-Work Opportunities program, students receive academic instruction from teachers at the school setting, while receiving hands-on, work experience, including paid work experience, from workplace mentors at the job site. The School-to-Work Opportunities initiative is intended to break down barriers between school and work and to provide States and local partnerships with flexibility to design programs that contain the basic program components within the local context. Assuming that requirements of the three core components are otherwise satisfied, some degree of overlap between the work-based and the school-based learning components, would not necessarily be impermissible, and may, at times, be appropriate.

Changes: None.

Comment: One commenter noted that, to serve students with disabilities, including those with severe disabilities, the Secretaries should add, after "paid work experience," the phrase, "including supported employment."

Discussion: See discussion regarding paid work experience and the flexibility surrounding it as well as previous discussions regarding the requirement to ensure opportunities for all students, including disabled students. Also, as previously discussed, funds awarded under this competition may be used to help employers provide necessary support to students, including disabled students.

Changes: None.

Comment: One commenter felt that States should be required to show a broad and industry-wide commitment from employers to ensure that students get the necessary industry-wide exposure.

Discussion: The Secretaries agree with the commenter that a demonstration of industry-wide commitment to the School-to-Work Opportunities program by any participating State is important toward ensuring that employers are seriously committed to their State's program and that all students are provided with adequate industry-wide exposure. Conversely, employer involvement is important in ensuring that School-to-Work Opportunity programs are responsive to business needs. However, under the "Comprehensive Statewide System" selection criterion and the "Collaboration and Involvement of Key Partners" selection criterion, the notice already addresses the commenter's concerns. Under these criteria, States must demonstrate and describe the commitment of employers and of State agency officials responsible for job training and employment.

Changes: None.

Comment: One commenter noted that current co-op initiatives in community colleges should be recognized and promoted in the notice. The commenter believes that these initiatives have the established infrastructure to implement school-to-work initiatives, including networks of co-op administrators, job developers, faculty coordinators, career counselors, and employer site supervisors. The commenter stated that community colleges are positioned to link co-op programs between secondary and postsecondary institutions and to improve their quality.

Discussion: The Secretaries agree with the commenter that community colleges and programs sponsored by community colleges can make a significant contribution to statewide school-to-work initiatives and systems. In applying under this competition, States are to "describe the procedure for obtaining the active and continued involvement in the statewide School-to-Work Opportunities system of employers and other interested parties such as * * * postsecondary educational institutions * * *." As the commenter notes, it is very possible that a co-op program could be included as part of a School-to-Work Opportunity system, so long as it meets the basic program requirements. The Secretaries would expect States to discuss in their plans how they will build on, modify, and enrich the efforts of community colleges to develop comprehensive School-to-Work Opportunities systems that meet the requirements of this priority.

Changes: None.

General Program Requirements—School-based Learning Component

Comment: One commenter stated that School-to-Work Opportunities systems will never achieve their intended goal of creating high-quality opportunities for all American youth unless programs contain: (1) "Enabling tools" to provide students and parents with the information, assistance, capacity, and (2) safeguards necessary to obtain the opportunities promised by the School-to-Work Opportunities program. The commenter believed that it was necessary to provide parents with: (a) An unambiguous statement targeted to all youth of the opportunities provided by the program; (b) the information, assistance, and authority for targeted youth and their parents to obtain access to program opportunities, participate in shaping programs, and remedy the problems that will inevitably occur; (c) systems for ensuring that information about these program opportunities and involvement in shaping the programs extends beyond the school district central offices to the teachers; and (d) a statement of responsibilities for both technical assistance and overseeing local implementation.

Discussion: The Secretaries agree that providing program information to both parents and students, is essential to a student's successful participation in, and completion of, a School-to-Work Opportunities program. For that reason, they have added under "examples of statewide activities," the clause "working with localities to develop strategies to recruit and retain all students in programs, including those from a broad range of backgrounds and circumstances," and, as an example of activities for local partnerships, they have added the clause "conducting outreach to all students in a manner that most appropriately meets the needs of their communities." Also, under paragraph (b)(3) of the priority, States are required to describe their procedure for obtaining the continued involvement of "employers and other interested parties, such as * * * students, parents * * *." Moreover, under the Student Participation selection criterion, the Secretaries will evaluate whether each State has proposed realistic strategies and programs to ensure that all students have the opportunity to participate in the State's School-to-Work Opportunities program. The Secretaries expect that a part of each State's strategy for ensuring participation would be providing information to all students about opportunities that are available to them within the program. However, beyond these provisions, the Secretaries are opposed to imposing further requirements upon States governing the formulation and nature of the program information disseminated.

Changes: The section on "Examples of Statewide Activities" has been revised to include "working with localities to develop strategies to recruit and retain all students in programs including those from a broad range of backgrounds and circumstances." As an example of "Activities for Local Partnerships" the following has been added: "Conducting outreach to all students in a manner that most appropriately meets their needs and the needs of their communities."

Comment: One commenter observed that the academic outcomes expected from school-based learning should qualify students to enter and succeed in four-year postsecondary institutions upon graduation from high school. This commenter saw a significant possibility that students who enter a School-to-

Work Opportunities program will face barriers to the full range of postsecondary institutions, feeding parents' and educators' tracking concerns. The commenter also believed that the imperative for students to meet entrance requirements for four-year institutions is made more critical by the early age at which youth will be encouraged to select a "career major."

Discussion: The School-to-Work Opportunities initiative is not limited to non-college-bound students. Rather, it is intended for all students. The definition of the term "All students" refers to students from a broad range of backgrounds and circumstances "including * * * academically talented students." The notice states that career majors would typically include two years of secondary schools and one or two years of postsecondary education. As a result of their participation in a School-to-Work Opportunities program, students who are completing their first or second years at the postsecondary level would be encouraged to consider different options in employment and education, including enrollment in a four-year degree granting college or university. In addition, since students in School-to-Work Opportunities programs will be held to high academic standards, including, where applicable, those developed under Goals 2000, the Secretaries expect that these high standards will ensure that students who have participated in their State's School-to-Work Opportunities program are academically prepared for enrollment in four-year postsecondary institutions. However, in response to this comment as well as other related comments, the definition of "career major" has been revised to include admission to a degree-granting college or university as a possible outcome.

Changes: The definition of "Career major" has been revised to include admission to a degree-granting college or university as a possible outcome for participating students.

Comments: Two commenters stated that the proposed school-based learning component is inadequate with regard to the degree of participation that it requires from businesses and industries in such areas as planning, curriculum and program development, instruction, evaluation, and job placement. The commenters felt that the notice fails to take sufficient advantage of many effective ways in which business can be a partner with education throughout the entire instructional process prior to actual paid job placement.

Discussion: The Secretaries strongly concur with the commenters that the active and continued involvement of business and industry is essential to the effective integration of school-based and work-based learning. Under this competition, business and industry involvement is a requirement, as provided for in paragraph (b)(3) of the priority contained in this notice. Plans will be reviewed for evidence of such involvement, as provided for in paragraph (b)(2) of the selection criteria, "Collaboration and Involvement of Key Partners—Involvement by key parties." Moreover, the School-to-Work Opportunities program does not limit the involvement of business and industry nor limit their roles in the collaborative partnerships. Indeed, business will necessarily play a key role in the design as well as the implementation of each State's School-to-Work Opportunities program.

Changes: None.

Comment: One commenter believed that, while still in school, students should be linked with the workplace for mentoring, job-shadowing, and other context-based experiences that can contribute to increased program completion and employment. Another commenter believed that businesses should provide significant input to the design of curriculum, provide mentors, pay students, develop skills standards, and employ youth. This commenter advocated the involvement of employers who currently participate in work and learning programs, rather than merely involving industry leaders.

Discussion: The Secretaries strongly concur with both of these commenters but believe that the notice currently addresses their concerns.

Changes: None.

Comment: One commenter was of the opinion that there is virtually no capacity in schools or anywhere else to counsel students on career majors and suggested that this area of the initiative be considered further. Another commenter noted that the school-based learning component does not specify when career counseling should begin. A third commenter suggested that, since the first bullet under "school-based learning" suggests that career majors may be "reconsidered," a second bullet should be added immediately under it, to read: "School-based learning that includes the integration of occupational information and career development assistance into academic instruction and the availability to students of direct access to that occupational information and those career development assistance tools that relate occupational choice to educational attainment." The commenter believed that, without this additional requirement, the choices made by students may not be realistic or appropriate.

Discussion: The Secretaries agree that, in many cases, students do not receive the guidance and counseling needed to make important decisions related to education and training leading to meaningful employment. It is for this reason that career exploration and counseling is required as an important activity in the school-based learning component of the notice. States seeking to receive a grant under this competition must demonstrate that the school-based learning component of their School-to-Work Opportunities systems will include career exploration and counseling. In addition, however, in response to the commenter's concerns, the Secretaries have revised the School-based Learning component to require, among other stated elements, "career awareness and exploration and counseling (beginning at the earliest possible age)" in order to help those students who may be interested, to identify and select or reconsider, their interests, goals, and career majors, "including those options that may not be traditional for their gender, race or ethnicity." By this change, the Secretaries wish to emphasize the importance of career awareness and exploration at an early age. The determination of the actual age or grade level at which this activity should begin, has been left to the States.

Changes: The School-based Learning component has been revised to require, among other stated elements, "career awareness and exploration and counseling (beginning at the earliest possible age)" in order to help those students who may be interested, to identify and select or reconsider, their interests, goals, and career majors, "including those options that may not be traditional for their gender, race, or ethnicity."

General Program Requirements—Connecting Activities

Comment: One commenter believed that the description of information collection and analysis in the connecting activities component of the "General Program Requirements" of the priority is too general to provide useful information. The commenter believed that the information should include annual participation and post-program outcomes, and that the data should be "disaggregated" by gender, race, ethnicity, socio-economic background, limited-English proficiency, and disability, so that any lack of participation or achievement by one group would not be masked by the

success of the program for the general population.

Discussion: The Secretaries agree with the commenters that disaggregated data is likely to be important for determinations of the success of the program for all groups. They would expect that the information collected and analysis provided under the connecting activities component to describe student participation in the program. This may include information on gender, race, ethnicity, socio-economic background, limited-English proficiency, and disability.

Changes: A change has been made to the "General Program Requirements Connecting Activities" section of notice so that it is specified that among the information that may be collected is information on gender, race, ethnicity, socio-economic background, limited-English proficiency, and disability.

Comment: One commenter requested that the Secretaries add the following additional requirement to the list of connecting activities in the priority: "Providing job coaching services to youth with disabilities within a supported employment model." The commenter believed that job coaches could help students acquire job skills and could help employers achieve the workplace accommodations that may be necessary to job success.

Discussion: As is provided for in the school-based and work-based learning components respectively, career exploration and counseling, as well as workplace mentoring, must be provided to all students. In addition, the notice requires States to describe in their applications how they will ensure opportunities for all students, including students with disabilities, to participate in School-to-Work Opportunities programs. While the Secretaries believe that funds awarded under this competition may be expended to cover the costs of what the commenter has referred to as job coaching for disabled students within a supported employment model, States may also seek to utilize funds available from other sources to meet what may be the special needs of disabled students participating in their School-to-Work Opportunities programs. Indeed, under paragraph (b)(4) of the priority, States are specifically required to describe how their School-to-Work Opportunities systems will coordinate the use of education and training funds from State and private sources with related Federal program funds.

Changes: None.

Examples of Statewide Activities

Comment: One commenter requested the inclusion of "related services personnel" among those individuals for whom training could be provided by a grantee receiving funds under this competition. The commenter felt that related services personnel would be critical to the success of students with disabilities in School-to-Work Opportunities programs and that these individuals should be trained along with the teachers and other professionals named in paragraph (c) under "Examples of Statewide Activities."

Discussion: Under the section of the notice entitled "Examples of Statewide Activities" there is a list which is meant only to be illustrative and to provide examples of some of the grantee expenditures that would be allowable under this program. The Secretaries agree that the costs of training related services personnel is sufficiently important to be added to the list as an allowable expenditure under this program.

Changes: Reference to "related services personnel" has been added to the list of those individuals for whom training could be provided by a grantee under this program.

Comment: One commenter recommended that examples should be added to the list of statewide activities to focus on the needs of disadvantaged youth and poor communities. The commenter proposed adding, as an example of allowable statewide activities, stimulating the development of partnerships in poor communities, and providing training and dissemination of curricula to local partnerships to more effectively respond to the needs of disadvantaged youth.

Discussion: The Secretaries agree with the commenter that the examples of statewide activities should include activities aimed at addressing the particular needs of disadvantaged youth and poor communities. Accordingly, paragraph (b) of the examples has been revised to include stimulating the development of partnerships in poor communities. The Secretaries note that the statewide activities as proposed include the training and curricula dissemination activities cited by the commenter, for teachers, employers, workplace mentors, and others, at the local level. However, the Secretaries believe that an additional activity should be added, to clarify that States may assist localities in formulating strategies to recruit and retain all students including the poor and disadvantaged. These strategies may include the training and curricula dissemination activities described in paragraphs (c) and (e) of the examples.

Changes: Paragraph (b) under "Examples of Statewide Activities" has been revised to include the clause: "Stimulating the development of partnerships in poor communities" as an outreach activity to promote and support collaboration in School-to-Work Opportunities programs. In addition, a new paragraph (h) has been added to provide that States may work "with localities to develop strategies to recruit and retain all students in School-To-Work Opportunities programs, including those from a broad range of backgrounds and circumstances."

Allocation of Funds to Local Partnerships

Comment: One commenter felt that the Secretaries should require local partnerships to describe how they will train counselors and other personnel to provide minority, female, disabled, and limited-English proficient youth with access to high-skill, high-wage, non-traditional careers. The commenter believed that such a requirement should be included in this section on "Allocation of Funds to Local Partnerships" and that it should be given as an example in the succeeding section, "Examples of Activities for Local Partnerships."

Discussion: The Secretaries agree that training is an important activity, and have included "training for teachers, employers, workplace mentors, counselors, and others," as examples of State activities and "providing training to work-based and school-based staff on new curricula, student assessments, student guidance, and feedback to the school regarding student performance," as examples of local partnership activities. Also, one of the requirements under school-based learning is "career awareness and career exploration and counseling in order to help students who may be interested to identify and select or reconsider their interests, goals, and career majors." The Secretaries do not wish to mandate to local partnerships who should be trained or how the training should be accomplished. Rather, the Secretaries think it is preferable for local partnerships to make those determinations in ways that best serve the programs which they are implementing and the students participating in those programs.

Changes: None.

Examples of Activities for Local Partnerships

Comment: Two commenters had suggestions regarding the "Examples of Activities for Local Partnerships" provided in the notice. One commenter believed that paragraph (f) (redesignated as paragraph (g)) should be changed to specifically allow students with disabilities to participate in graduation assistance programs to help them graduate from high school, continue their education or training, and to find jobs as well as advance in them. The second commenter requested the Secretaries to add the word, "all," before "at risk and low-achieving students" in paragraph (f) (redesignated as paragraph (g)). The commenter felt that this change was necessary to ensure that all categories of students listed in the definition of "All students" would be served. The commenter also suggested changing the last phrase in paragraph (f) of the October 14, 1993 notice, to read, "* * * and finding, maintaining or advancing in jobs," to emphasize that maintaining a job is equally as important as finding one.

Discussion: The Secretaries agree with commenters that graduation assistance programs should be geared to serving all students, as defined in the notice, and that the activity described in redesignated paragraph (g) should clearly refer to disabled students as well as to at-risk and low-achieving students. The Secretaries also believe that "maintaining a job" is consistent with the desired outcomes of the School-to-Work Opportunities initiative and of this competition, and have added the word, "maintaining" to redesignated paragraph (g) of the "Examples of Activities for Local Partnerships." The commenter on the availability of occupational information and career development assistance has suggested two, among what may be many, additional worthwhile activities that might be carried out under a local partnership. The Secretaries, because this section is purely illustrative and in the interest of brevity, have elected not to include them in the final priority. Although the Secretaries find commendable, the suggestion to require that all at-risk and low-achieving students be served in a graduation assistance program, the Secretaries fully understand the difference between "equal access to opportunity" and a "guarantee," and, because of the limited resources available, have elected to have local partnerships provide "opportunity for all students" in preference to a guarantee.

Changes: The notice has been modified by adding the word, "disabled" to redesignated paragraph (g) in the section on "Examples of Activities for Local Partnerships," so that it now reads: "* * * a graduation assistance program to assist at-risk, disabled, and low-achieving students, in graduating from high school. * * *." In addition, the Secretaries have modified this same paragraph by adding the word "maintaining" to the end of the paragraph. Accordingly, the notice now provides, specifically, that funds awarded by States to local partnerships under this competition may be utilized for the purpose of assisting at-risk, disabled, and low-achieving students in graduating from high school, enrolling in postsecondary education or training, and finding, maintaining, or advancing in jobs.

Comment: One commenter, expressing concern with what he referred to as decisionmakers' access to occupational information, suggested adding two activities to the list of activities for local partnerships. The commenter suggested revising paragraph (h) to specifically authorize the creation of after school, School-to-Work career centers, where students and parents could seek occupational and career information, carry out career exploration, seek guidance regarding career choices or the design of an educational program, or evaluate the educational preparation that students have received to date. The commenter also suggested adding a paragraph to authorize the publication of career information for use by parents and students, in cooperation with the State Occupational Information Coordinating Committee.

Discussion: The issue raised by the commenter is discussed earlier in the context of the School-to-Work Opportunities program's school-based learning component. In this context also, in suggesting that funds awarded under this competition be utilized for preparing and making available important program information for parents and students in after school centers or in publication, the commenter has suggested an activity that the Secretaries would consider to be an allowable activity for local partnerships.

Changes: None.

Examples of Activities for Local Partnerships—Youth

Comment: One commenter felt that the notice's references to youth for example, in paragraph (h) of Examples of Activities for Local Partnerships in the context of providing opportunities for dropout students were unclear. The commenter suggested defining the term "youth" so as to include, at a minimum, young persons up to, and including, age 25, to allow for the inclusion of young men and women who have dropped out, become parents, and face multiple obstacles to achieving a self-sufficient wage. Another commenter believed that defining the term "youth" to include students in the elementary grades would enhance the opportunities of children to develop early career awareness, thereby increasing School-to-Work Opportunities program participation rates in the high schools.

Discussion: Since the focus of the School-to-Work initiative and of this notice is on system building and institutional change, there are no detailed provisions for individual eligibility. The Secretaries believe that States should have the flexibility to determine the age range of the student population for their School-to-Work Opportunities programs. However, States are expected to develop systems that coordinate other education and training programs funded from sources that do set parameters for the youth to be served. For example, the Job Training Partnership Act limits the age of the youth to be served to 16 through 21 years of age. In addition, the required school-based learning component must include career awareness and career exploration and counseling. These activities may be carried out in the elementary and middle school years to better prepare students for School-to-Work Opportunities programs, as States and localities retain the flexibility to begin career awareness and counseling programs at as early a grade level as appears to be appropriate and useful.

Changes: None.

Comment: One commenter felt that a student's eligibility to participate in a School-to-Work Opportunities program should not be determined by student population based on age, such as age 16 through 21, but rather should be geared to grade level. The commenter believed that a student's eligibility to participate in School-to-Work Opportunities program should begin in ninth grade, since, in this way, all students would have an equal opportunity to qualify for the program.

Discussion: As is discussed above, the Secretaries believe that States should retain the flexibility to design School-to-Work Opportunities systems, within the parameters of the program as contained in this notice, that best meet the needs of their students.

Changes: None.

Safeguards

Comment: One commenter requested that the Secretaries establish additional safeguards, beyond those provided for in the notice, so as to ensure student access, services, information, and assistance to students and parents. Another commenter suggested adding a new safeguard to provide that nothing in this notice should be construed as modifying or affecting the Fair Labor Standards Act.

Discussion: Regarding the applicability of the Fair Labor Standards Act, the Secretaries note that, as a matter of law, this notice does not and cannot in any way modify or affect either the Fair Labor Standards Act or its applicability. However, the Secretaries agree with the commenter's suggestion that a reference to applicable fair labor standards would be helpful in the context of the "Safeguards" section of the notice. Regarding the commenter's suggestion that additional safeguards be added to the list, the Secretaries do not believe that this is necessary, since relevant Federal and State law will continue to apply to this program, regardless of whether these are specifically mentioned or listed in the notice.

Changes: The notice has been modified to include the word "labor" in paragraph (d) of the "Safeguards" section of the notice. Paragraph (d) now reads: "Students shall be provided with adequate and safe equipment and a safe and healthful workplace in conformity with all health, safety, and labor standards of Federal, State, and local law."

Selection Criteria—Comprehensive Statewide System

Comment: In making choices among standards and assessments for occupational skills, one commenter suggested that States be required to consider whether the standards and assessments chosen reflect the needs of high-performance workplaces, whether they are benchmarked to the highest international standards, and whether they reflect requirements of clusters of occupations requiring similar skills, rather than individual jobs or occupations. The commenter suggested that among the needs of high performance work organizations are the acquisition of skills required to be an effective member of a work group, the capacity to learn new skills quickly, broad analytical and systems thinking skills, and specific skill sets that facilitate high mobility among a wide variety of related jobs and occupations within an industry and among different industries.

Discussion: The Secretaries agree that State skill standards and methods of skill assessment must be benchmarked to high quality standards in order to ensure, to the extent possible, that students receiving portable skill certificates under the School-to-Work Opportunities program will have the opportunity to enter high-skill, high-wage, employment. Therefore, the clause "benchmarked to high quality standards" is added to the definition of the term "Skill certificate." Similarly, a question has been added to the "Comprehensive Statewide Systems" selection criterion requiring States to indicate in their applications whether their processes for assessing skills reflect the needs of high performance workplaces as well as meeting the requirements of broad clusters of related occupations and industries, rather than those of individual jobs or occupations. The Secretaries generally agree with the commenter that, in making their choices among standards and assessments for occupational skills, States should choose standards and assessments that build upon available standards and assessments; incorporate those skills that are necessary for employees to participate as active members of a work group and serve as team leaders; utilize high standards in an industry, occupation or profession; include measures of broad analytical and thinking skills; and reflect the requirements of clusters of occupations, requiring similar skills, rather than narrowly-defined individual jobs or occupations.

Changes: In response to the commenter, the definition of the term "Skill certificate" has been revised to require that skills be benchmarked to high quality standards. In addition, the following question has been added to the "Comprehensive Statewide System" criterion: "Does the State's process for assessing skills reflect the needs of high performance workplaces as well as meet the requirements of broad clusters of related occupations and industries, rather than those of individual jobs or occupations?"

Comment: One commenter suggested that the selection criterion "Comprehensive Statewide System" include a question asking applicants to describe how their School-to-Work Opportunities system is a part of school-wide restructuring that provides every student in each school with experimental learning programs—hands-on learning, students' demonstration of skills through projects, mentoring and coaching relationships, and increased student self-esteem and motivation that are linked with academic education.

Discussion: School-to-Work Opportunities systems under the priority established in this notice must integrate work-based learning and school-based learning. School-to-Work Opportunities programs must incorporate a planned program of job training and experiences, paid work experience, workplace mentoring, and a program of study designed to meet the same challenging academic standards developed for all students. The criterion "Comprehensive Statewide System" is intended to encourage applicants to describe how their proposed School-to-Work Opportunities systems will produce systemic statewide change that will have a substantial beneficial impact on the preparation of youth for either a first job or further training or education.

This criterion also encourages States to describe State and local performance standards that lead to statewide systemic reform of secondary education. The "Local Programs" criterion is intended to elicit a detailed description of the School-to-Work Opportunities system to be implemented at the local level. The Secretaries expect that, combined, these criteria will result in applicants submitting descriptions of State plans that provide for fundamental statewide restructuring of existing education and training programs.

Changes: None.

Comment: One commenter who believed that community-based organizations and the human services sectors are currently under-utilized, suggested that a question be added under the selection criterion "Comprehensive Statewide System" to read: "Does the plan describe methods to ensure high school completion by participants such as graduation assistance programs targeting low-achieving and at-risk youth or offering human services in coordination with education and job training?" One commenter was concerned that occupational and career information and career guidance and counseling be provided and suggested adding a question to read: "Has the State incorporated into the Statewide plan provisions for the presentation of occupational and career information and career development assistance to all students in all parts of the State?"

Discussion: The Secretaries agree with the commenter that in response to this notice applicants should describe the methods that they have selected to ensure high school completion. The criterion "Student Participation", therefore, focuses on providing "all

students", including low-achieving students, the opportunity to participate in School-to-Work Opportunities programs. The "Local Programs" criterion emphasizes that plans must include programs that result in the award of high school diplomas, as is otherwise required in the notice. With respect to the commenter's suggestion that statewide plans provide for the presentation of occupational and career information and career development assistance, one of the "General Program Requirements" already contained in the priority, is that the school-based learning component of any School-to-Work program include career exploration and counseling.

Changes: None.

Selection Criteria—Collaboration and Involvement of Key Partners

Comment: One commenter suggested adding State officials responsible for special education, vocational rehabilitation, and other transition services, to the list of State level officials with whom applicants are encouraged to collaborate in implementing statewide School-to-Work Opportunities systems. Other commenters suggested adding a variety of entities to the list of key parties to be involved in the implementation of States' School-to-Work Opportunities systems. Specifically, commenters suggested adding vocational and comprehensive high schools, local vocational education agencies, private industry councils established under the Job Training Partnership Act (JTPA), related services personnel, State Occupational Information Coordinating Committees and other occupational information providers, human services agencies, JTPA operators and educational programs serving farmworkers. One commenter was of the opinion that the involvement of other parties cannot serve as a substitute for the involvement of students, parents, teachers, and area residents in State and local decision-making. The commenter also felt that the statewide system should include as many as possible of the interested parties listed under the criterion "Involvement by Key Parties."

Discussion: The lists of entities under paragraphs (b) (1) and (2) of the selection criterion "Collaboration and Involvement of Key Partners" are not intended to be exhaustive, but, rather, are intended to provide examples of entities that should be involved in developing and implementing a successful School-to-Work Opportunities system. It is likely that the other entities suggested by the commenters also would contribute to the success of State and local School-to-Work Opportunities activities and it would be appropriate for State and local agencies to seek their involvement. In accordance with these criteria, as well as with paragraphs (b)(2) and (b)(3) of the priority, the Secretaries strongly encourage the involvement of all groups and entities that can perform useful and productive functions in the implementation of State School-to-Work Opportunities programs.

Changes: None.

Selection Criteria—Student Participation

Comment: One commenter felt that under the "Student Participation" selection criterion insufficient attention is accorded to the adequacy of plans to reach and serve out-of-school youth effectively and suggested adding a specific question to address this perceived deficiency. Another commenter said that the description of "all students" in the selection criteria is inconsistent with the definition of the term in the notice's "Definitions" section, which includes students with limited-English proficiency. The commenter would have this population added to the selection criterion.

Discussion: The priority established in this notice requires State plans to include realistic strategies and programs to ensure that all students have the opportunity to participate in School-to-Work Opportunities systems. With regard to the comment on service to out-of-school youth, the Secretaries note that the definition of the term "All students" has been modified to include students who have dropped out of school. The Secretaries recognize that the definition of "All students" includes individuals with limited-English proficiency and agree that, for consistency, the reference to students with limited-English proficiency also should be included in this criterion.

Changes: The "Student Participation" criterion has been modified to include specific reference to students with limited-English proficiency.

Comment: One commenter was concerned that the children of migrant and seasonal farmworkers are often overlooked by States and suggested that the Secretaries add "migrant and seasonal farmworker children" among those explicitly intended to be served under the program. The commenter also suggested that States be encouraged to provide early intervention for youth, particularly youth at risk of dropping out of school at an early age.

Discussion: As written, the "Student Participation" criterion calls for realistic strategies and programs to included all students. In States with migrant workers and seasonal farmworkers, this would include the children of those individuals. The Secretaries expect those students to be provided with the opportunity to participate in School-to-Work Opportunities programs. Additionally, the Secretaries strongly encourage States to provide early intervention for youth, particularly youth at risk of dropping out of school at an early age.

Change: None.

Selection Criteria—Local Programs

Comment: One commenter suggested that the "Local programs" selection criterion be modified to permit supported employment as a part of work-based learning. The commenter was also concerned about the participation of special education students and suggested that the phrase "or alternative certificate" be added after "award of a high school diploma." The commenter also felt that the phrase "including those funded under JTPA, IDEA, Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act), the Rehabilitation Act, and JOBS" should be added following the question "Have promising existing programs been considered for adaptation?"

Discussion: With regard to the suggestion that the "Local programs" selection criterion be modified to permit supported employment as a part of work-based learning, such a change would make the selection criterion inconsistent with the priority, which includes a safeguard prohibiting the use of funds awarded under this competition for the payment of wages to students. The Secretaries encourage grantees to use other Federal, State, local, public, and private resources to provide supported employment, work study, and cooperative education where these approaches facilitate work-based learning. With regard to the comment suggesting that alternative certificates be accepted in lieu of high school diplomas for disabled students, the clause "or its equivalent" is added to this part of the notice to provide for alternative certificates for disabled students. Finally, while the Secretaries agree with the commenter that programs under the JTPA, IDEA, Perkins Act, Rehabilitation Act, and JOBS have produced practices that should be considered for adaptation, other Federal, State, and local programs have also developed promising programs that States and locals may wish to consider. The Secretaries encourage States and localities to adapt all promising programs to their School-to-Work

Opportunities systems in a manner that best suits the systems they plan to implement.

Changes: The clause "or its equivalent" has been added to the definition of the term "Career major," to the "General Program Requirements" section of this notice, and to the "Local Programs" criterion, providing for alternative certificates for disabled students.

Selection Criteria—Management Plan

Comment: One commenter felt that greater emphasis should be given to States that present new or alternative methods of assessment for their activities. This commenter also believed that priority should be given to applicants that are able to demonstrate real innovation on the part of their own staff as well as on the part of the stakeholders they have brought together.

Discussion: The Secretaries agree with the commenter that special consideration should be given to States that propose innovative approaches and have added this factor to the decision-making process of the Secretaries.

Changes: The notice has been modified so that the description of the review process included under "Selection Criteria for Evaluating Applications" has been revised to state that final funding decisions made by the Secretaries will also include consideration of such factors as replicability, sustainability, and innovation. In addition, the "Management Plan" criterion now asks the question "Does the management plan include a process for incorporating methods to improve or redesign the implementation system based on program outcomes?"

Comment: One commenter was concerned about special education students and expressed the belief that interagency data collection is essential for monitoring the success of special education programs and requested that the Secretaries add a question to read: "Does the State's management plan include a system for interagency data collection?" This commenter also requested the insertion of the word "cross-trained" into the question on key personnel so that it would read "Are key personnel under the plan cross-trained and qualified to perform * * *." This commenter believed that key personnel should be knowledgeable on both labor and educational issues.

Discussion: The Secretaries agree that the provision of occupational and career development assistance as well as program information, guidance, and counseling, are all important aspects of School-to-Work Opportunities programs to be developed under the priority. However, the Secretaries believe that the importance of these is already provided for in the priority as written. While the Secretaries agree with the commenter that it would be beneficial for applicants to utilize key personnel who are knowledgeable of both the labor and educational components, the Secretaries do not think it advisable to prescribe the qualifications of key personnel. The Secretaries prefer to leave those decisions to the States.

Changes: None.

Comment: One commenter was concerned about the sufficiency of occupational and career information provided under School-to-Work Opportunities programs and suggested adding two questions to the "Management Plan" criterion, to read: "Does the State management plan adequately address the timely provision of accurate occupational and career information to school and program administrators, teachers and counselors, students and parents throughout the State?" and "Does the State management plan adequately address the need to provide career development assistance, guidance and counseling to students and parents in all parts of the State?"

Discussion: The Secretaries have concluded that, since the implementation of School-to-Work Opportunities programs will be a joint effort involving coordination among Federal, State, and local entities, it is likely that effective methods to improve or redesign a project's implementation will be shared among these.

Changes: None.

Selection Criteria—Distribution of Points

Comment: One commenter questioned the distribution of points among the selection criteria and recommended that the points be redistributed with 20 points for the "Comprehensive Statewide System" criterion, 17 points for the "Collaboration and Involvement of Key Partners" criterion, 17 points for the "Resources" criterion (particularly if the disadvantaged are to meet the same goals as other students), 17 points for the "Student Participation" criterion, 17 points for the "Local Programs" criterion, and 12 points for the "Management Plan" criterion. Another commenter concerned with special education students suggested that more points be awarded for the "Local Programs" selection criterion.

Discussion: The Secretaries have given much consideration to the distribution of points among the selection criteria. They have concluded that the distribution provided for in the notice results in the most appropriate balance among the criteria.

Changes: None.

Selection Criteria—General

Comment: One commenter believed the notice must be strengthened to ensure that all youth receive the assistance and services they need to fully participate and succeed and processes are in place for identifying and addressing disparities in participation and success. The commenter recommended that the Secretaries add a selection factor that reads: "Are there adequate State and local provisions to ensure equal access to all programs and program components; supplemental services and accommodations necessary for various students to participate and succeed; the collecting of disaggregated data on how well different groups are being served; and the taking of effective steps to remedy unequal participation or outcomes (based on data concerning how groups need to be served)?"

Discussion: In reviewing applications under this competition, the Secretaries will seek to determine the extent to which applications propose realistic strategies and programs to ensure that "all students" have an opportunity to participate in the State's School-to-Work Opportunities programs. In order to succeed in a School-to-Work Opportunities program, some students may need additional assistance. In this regard, the selection criterion "Student Participation" will be used to assess applicants' strategies for recognizing barriers to participation and proposing effective ways of overcoming them. However, the program funded under this competition does not purport to guarantee access to every student.

Changes: None.

Comment: One commenter suggested that the selection criteria consider the extent and quality of a State's implementation of key Perkins Act provisions, including all aspects of the industry, academic-vocational integration, full access, services and success for individuals who are members of special populations, and effective participatory planning with students, parents, teachers, and area residents in terms of: (a) the extent of the State's current implementation of those provisions, and (b) how they will be coordinated with and incorporated into the comprehensive school-to-work system. This commenter believed the individual States' track records in implementing these Perkins Act provisions would be good indicators of

their capacities for commitments to high quality implementation of School-to-Work Opportunities systems.

Discussion: Because the School-to-Work Opportunities system to be developed and implemented under the priority will involve the coordination of education and training resources of many different Federal, State, and private sources, the Secretaries believe that a State's track record in implementing Perkins Act provisions, while important, is only one of many critical factors that serve as indicators of commitment and ultimately contribute to a successful School-to-Work Opportunities system. The Secretaries do not believe that giving special emphasis to a State's implementation of provisions under the Perkins Act fosters the intent that States develop comprehensive School-to-Work Opportunities systems that incorporate the best practices and programs regardless of funding source.

Changes: None.

[FR Doc. 94–2387 Filed 2–2–94; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Department of Labor

[CFDA No. 84.199–H]

Cooperative Demonstration—School-to-Work Opportunities State Implementation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Note to Applicants: This notice is a complete application package. Together with the Carl D. Perkins Vocational and Applied Technology Education Act (the statute authorizing the program), the applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), and the notice of final priority, selection criteria, and other requirements, published elsewhere in this issue of the **Federal Register**, this notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Cooperative Demonstration—School-to-Work Opportunities State Implementation Grants Program provides financial assistance to States to establish comprehensive, statewide, School-to-Work Opportunities systems. These systems will offer young Americans access to education and training programs designed to prepare them for a first job in high-skill, high-wage careers, and to increase their opportunities for further education.

The Secretaries wish to highlight, for potential applicants, that this program can help to further National Education Goals 3 and 5—Goal 3, American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy. The School-to-Work Opportunities initiative also meets Goal 5 by helping to ensure that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: States are eligible to apply for Implementation Grants under this competition.

Deadline for Transmittal of Applications: April 1, 1994.

Deadline for Intergovernmental Review: May 31, 1994.

Available Funds: $36,000,000 (funding for first 12 months).

Estimated Average Size of Awards: The amount of an award under this competition will be determined on a case by case basis and will depend upon the scope and quality of the application and the relative size of the State.

Estimated Number of Awards: 4–8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 5 years (5 twelve-month grant periods).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs)

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act-Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR parts 400 and 426.

Priority and Selection Criteria: The priority and selection criteria in the notice of final priority, selection criteria, and other requirements for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 24, 1993 (58 FR 50162–50164).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed to the following address: The Secretary, E.O. 12372—CFDA #84.199–H, U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications: (a) If an applicant wants

to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA #84.199–H),
Washington, DC 20202–4725, or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA #84.199–H),
room #3633,
Regional Office Building #3,
7th and D Streets SW.,
Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into five parts, plus a statement regarding estimated public reporting burden. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 [Rev. 4–88]) and instructions.

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Application Narrative.

Part V: Additional Assurances and Certifications:

a. Estimated Public Reporting Burden.

b. Assurances—Non Construction Programs (Standard Form 424B).

c. Certification regarding Lobbying: Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

d. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

e. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All applicants must submit one original signed application, including ink signatures on all forms and assurances and six copies of the application. Please mark each application as original or copy.

No grant may be awarded unless a complete application form has been received.

FOR FURTHER INFORMATION CONTACT: Marian Banfield, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4517 MES), Washington, DC 20202–7327. Telephone (202) 205–8838. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for any discretionary grant competition is the application notice published in the **Federal Register.**

Program Authority: 20 U.S.C. 2420 i.

Dated: January 25, 1994.

Richard W. Riley,

Secretary of Education.

Robert B. Reich,

Secretary of Labor.

BILLING CODE 4000–01–P

Appendix A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____
8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):	9. NAME OF FEDERAL AGENCY: U.S. Department of Education
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.191H TITLE: Cooperative Demonstration--School-to Work Opportunities	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
a. Federal	$ .00	
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4000-01-C

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C	D	E
1. Personnel					
2. Fringe Benefits (Rate %)					
3. Travel					
4. Equipment					
5. Supplies					
6. Contractual					
7. Other					
8. Total, Direct Cost (lines 1 through 7					
9. Indirect Cost (Rate %)					
10. Training Costs/Stipends					
11. TOTAL, Federal Funds Requested (lines 8 through 10)					

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C	D	E
1. Cash Contribution					
2. In-Kind Contribution (only costs specifically for this project)					
3. TOTAL, Cost Sharing (Rate 25%)					

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the entire project budget period.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; Column C to record the third 12-month budget period; Column D to record the fourth budget period; and Column E to record the fifth 12-month budget period.

Instructions for Part II—Budget Information

Section A—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid to project personnel.
2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.
3. *Travel:* Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for three people to attend three developmental staff meetings in Washington, DC.
4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government). (Please see EDGAR 74.132)
5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project.
6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.
7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. *Total, Direct Costs:* Show the total for lines 1 through 7.
9. *Indirect Costs:* Indicate the rate and amount of indirect costs.
10. *Training/Stipend Cost:* (if allowable).
11. *Total, Federal Funds Requested:* Show total for lines 8 through 10.

Section B—Cost Sharing Summary

Indicate the actual rate and amount of cost sharing. A recipient of an award under the Cooperative Demonstration Program—School-to-Work Opportunities State Implementation Grants is required to provide at least 25 percent, as cash contribution or in-kind match, of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts. For example, if the total cost of a project is $100,000, an applicant would have to contribute $25,000 to match a Federal award of $75,000 ($25,000=25 percent of $100,000 ($25,000 plus $75,000)).

Part III—Instructions for Budget Narrative

Prepare a detailed Budget Narrative for the first year of the project that justifies, and/or clarifies the budget figures shown in sections A. Explain:

1. How personnel costs are calculated—provide yearly and/or hourly rates; for other than full-time staff, provide hours per day, week, month, and year.
2. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs) and any other cost that may appear unusual;
3. How the major cost items relate to the proposed project activities (refer to application page);
4. The costs of the project's evaluation component;
5. What matching occurs in each budget category; and

Provide estimated budget totals for the second, third, fourth, and fifth years of the project.

Instructions for Part IV—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretaries in reviewing the application.

The Secretaries strongly requests the applicant to limit the Application Narrative to no more than 50 double-spaced, typed, 8½" × 11" pages (on one side only), although applications of greater length will be considered. Be sure that each page of your application is numbered consecutively.

Include as an appendix to the Application Narrative supporting documentation, also on 8½" × 11" paper, (e.g., letters of support, footnotes, resumes, etc.) or any other pertinent information that might assist the Secretaries in reviewing the application.

Applicants are advised that—

(1) Under § 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application for this phase of the review process. Letters of support sent separately from the formal application package are not considered by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment of resources and placement of successful completers.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1830–0512, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0524. Expiration date: December 31, 1996.)

Billing Code 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, Including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

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federal register

Thursday
February 3, 1994

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Rule and Proposed Rule to List the Pacific Pocket Mouse

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC39

Endangered and Threatened Wildlife and Plants; Emergency Rule to List the Pacific Pocket Mouse as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Pacific pocket mouse (*Perognathus longimembris pacificus*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). Prior to 1993, this species had not been observed in over 20 years. The Pacific pocket mouse was rediscovered on the Dana Point Headlands, Orange County, California, during July 1993. No more than 39 individuals are known to exist despite relatively intensive, recent surveys in all of the remaining, undisturbed locales where the species historically occurred.

The only known existing Pacific pocket mouse population is imminently threatened by a land development project and depredation by feral and/or domestic cats. Because of the need to make Federal funding, protection, and other measures immediately available to protect this species and its habitat, the Service finds that an emergency rule action is justified. This emergency rule provides Federal protection pursuant to the Act for this species for a period of 240 days. A proposed rule to list the Pacific pocket mouse as endangered is published concurrently with this emergency rule in this same **Federal Register** separate part.

DATES: This emergency rule is effective on January 31, 1994, and expires on September 28, 1994.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, Field Supervisor, Carlsbad Field Office, at the above address (telephone 619 431–9440; facsimile 619 431–9624).

SUPPLEMENTARY INFORMATION:

Background

The Pacific pocket mouse (*Perognathus longimembris pacificus*) is 1 of 19 recognized subspecies of the little pocket mouse (*Perognathus longimembris*) (Hall 1981), a species that is widely distributed throughout arid regions of the western United States and northwestern Mexico. It is the smallest member of the family Heteromyidae, which consists of spiny pocket mice (*Heteromys and Liomys*), pocket mice (*Perognathus and Chaetodipus*), kangaroo rats (*Dipodomys*), and kangaroo mice (*Microdipodops*). Virtually all members of this family are nocturnal, granivorous, and have external, deep, fur-lined cheek pouches (Ingles 1965; P. Brylski, consulting mammalogist, pers. comm., 1993).

The little pocket mouse is about 110 to 148 millimeters (mm) (4.3 to 6 inches (in)) long from nose to tip of tail. Its body pelage is spineless, bristle-free, and predominately brown, pinkish buff, or ochraceous buff above and light brown, pale tawny, buff, or whitish below. Two small patches of lighter hairs typically exist at the base of the ear. The tail can be either distinctly or indistinctly bicolored. The soles of the hind feet are hairy (Hall 1981).

The Pacific pocket mouse is the smallest subspecies of the little pocket mouse, ranging from about 110 to 126 mm (4.3 to 4.9 in) long from nose to tip of tail. The tail, hind foot, and skull lengths and the size of skull structures are also the smallest of all little pocket mouse subspecies.

The Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), which occurs mostly northeast of and more interior than the Pacific pocket mouse, is the only other subspecies of little pocket mouse in cismontane southern California, is 125 to 145 mm (4.9 to 5.7 in) in total length, and has a longer tail, hind foot, and skull than the Pacific pocket mouse. The nasal bones in the skull of the Los Angeles pocket mouse are also considerably larger than those of the Pacific pocket mouse (Huey 1939).

The Pacific pocket mouse was originally described by Mearns (1898) as a distinct species, *Perognathus pacificus*, based on the type specimen from San Diego County, California. von Bloeker (1931a,b) later recognized the Pacific pocket mouse as a distinct species, but subsequently concluded that the morphology of *P. pacificus* was not sufficiently distinct from *P. longimembris* to maintain the Pacific pocket mouse as a distinct species. von Bloeker reduced *P. pacificus* to *P. longimembris pacificus*. von Bloeker also described a second coastal subspecies, *P. longimembris cantwelli*, from El Segundo in Los Angeles County, California (von Bloeker 1932). After an analysis of 331 specimens of the little pocket mouse, Huey (1939) recognized *P. l. pacificus* to include the two subspecies described by von Bloeker (1932).

Although a taxonomic review of *P. longimembris* may be appropriate, Williams (*in litt.*, 1993) indicated that "the Pacific pocket mouse is distinct."

The Pacific pocket mouse occurs within about 3 kilometers (km) (2 miles (mi)) of the immediate coast of southern California from Marina del Rey and El Segundo in Los Angeles County south to the vicinity of the Mexican border in San Diego County (Hall 1981, Williams 1986, Erickson 1993) and below 180 meters (m) (600 feet (ft)) in elevation (Erickson 1993). Although the range map in Hall (1981) suggests that the range of the Pacific pocket mouse may extend into northwestern Baja California, Mexico, this subspecies has never been recorded outside of California (Erickson 1993).

The Pacific pocket mouse occurs on fine-grain, sandy substrates in the immediate vicinity of the Pacific Ocean (Mearns 1898, von Bloeker 1931a, Grinnell 1933, Bailey 1939). The Pacific pocket mouse inhabits coastal strand, coastal dunes, river alluvium, and coastal sage scrub growing on marine terraces (Grinnell 1933, Meserve 1972, Erickson 1993). Brylski (1993) detected the only known extant population on the Dana Point Headlands on loose sand substrates in a coastal sage scrub community dominated by California buckwheat (*Eriogonum fasiculatum*) and California sage (*Artemisia californica*).

The Pacific pocket mouse is likely facultatively or partially fossorial, relatively sedentary, and able to become torpid, estivate, or hibernate in response to adverse environmental conditions (Ingles 1965, Vaughan 1978, Zeiner *et al.* 1990).

While active above ground, little pocket mice have ranged up to 320 m (1,000 ft) from their burrows in a 24-hour period (Burt and Grossenheider 1976). Little pocket mouse home ranges vary in size from 0.12 to 0.56 hectares (0.30 to 1.4 acres), and populations range in density from 1 to 5.5 individuals per hectare (0.4 to 2.2 individuals per acre) (Chew and Butterworth 1964).

Pacific pocket mice primarily eat the seeds of grasses and forbs, but occasionally eat leafy material and soil-dwelling insects (von Bloeker 1931a; Meserve 1976a; Jameson and Peeters 1988; P. Brylski, pers. comm., 1993).

The little pocket mouse has a high metabolic rate (Bartholomew and Cade

1957), continually needs food supplies while active, and loses heat rapidly. It has limited capacity to store food. Little pocket mice may stay in their burrows continuously for up to 5 months in winter, alternating between periods of dormancy and feeding on stored seeds or hibernation in winter under adverse conditions (Bartholomew and Cade 1957, Ingles 1965, Kenagy 1973, Whitaker 1980).

Little pocket mice live up to 7.5 years in captivity and 3 to 5 years in the wild (Burt and Grossenheider 1976, Whitaker 1980). Pregnant and lactating females have been found from April through June, and immatures have been reported from June through September (Erickson 1993). Burt and Grossenheider (1976) previously reported that the little pocket mouse produces one or two litters (ranging in size from three to seven young) in a year.

The Pacific pocket mouse is historically known from eight populations. Approximately 80 percent of all Pacific pocket mouse records are from 1931 or 1932 (Erickson 1993). The following summarizes the historical distribution of the Pacific pocket mouse by county:

Los Angeles County. The Pacific pocket mouse historically was detected in three areas: Marina del Rey/El Segundo, Wilmington, and Clifton. No records of the Pacific pocket mouse exist in Los Angeles County since 1938 (P. Brylski, *in litt.*, 1993; D. Erickson, consulting biologist, *in litt.*, 1993; Erickson 1993).

Orange County. The Pacific pocket mouse has been found at two locales in Orange County: Dana Point and the San Joaquin Hills. The species was found on "Spyglass Hill" in the San Joaquin Hills from 1968 to 1971 (Erickson 1993). G.G. Cantwell previously collected 10 specimens at the Dana Point Headlands in 1932.

San Diego County. The Pacific pocket mouse has been detected at three general locales in San Diego County: the San Onofre area, Santa Margarita River Estuary, and the lower Tijuana River Valley. Another report of a single Pacific pocket mouse in suitable habitat from Lux Canyon, Encinitas, in June 1989 is now considered probable by the observer (Erickson 1993).

The only known extant population of the Pacific pocket mouse was rediscovered in July 1993 on the Dana Point Headlands in Orange County, California. Between 25 to 39 individual Pacific pocket mice were detected during trapping surveys conducted into August 1993 (Brylski 1993). This was the first time the Pacific pocket mouse had been collected at this site since 1971 (Erickson 1993). Numerous small-mammal survey and trapping efforts within its historical range (D. Erickson, *in litt.*, 1993; Erickson 1993) have failed to locate any additional populations. The remaining site is imminently threatened by a development that is expected to receive final approval in the very near future.

Previous Federal Action

The Pacific pocket mouse was designated by the Service as a category 2 candidate species for Federal listing as endangered or threatened in 1985 (50 FR 37966). It was retained in this category in subsequent notices of review published by the Service in the **Federal Register** in 1989 and 1991 (54 FR 554 and 56 FR 58804, respectively). Category 2 comprises taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The Service made the determination to list this species on the basis of new information received in 1993 that resulted in the elevation of the Pacific pocket mouse to category 1 status. Category 1 comprises taxa for which the Service has on file sufficient information to support proposals for endangered or threatened status.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Pacific pocket mouse should be classified as an endangered species. Procedures found at section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Pacific pocket mouse (*Perognathus longimembris pacificus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Although originally known from eight locales, the Pacific pocket mouse now occurs in one site on the Dana Point Headlands of Dana Point in Orange County. Although the Dana Point Headlands have remained relatively unchanged since the Pacific pocket mouse was first detected at this locale, a land development project has been approved by the Planning Commission, with final approval anticipated in early 1994. This proposed residential and hotel complex project would result in the removal of 3.65 acres of the 3.75 acres of habitat that Brylski (1993) identified as being occupied by Pacific pocket mice (EDAW 1993b). Grading that would destroy the only known Pacific pocket mouse population may proceed upon final approval of the proposed project. This site is also threatened by fuel modification for fire protection.

In Los Angeles County, two of the three historic locales for the Pacific pocket mouse (Clifton and Wilmington) have been developed, and the third (Marina del Rey/El Segundo) has been substantially altered since the species was last detected there. Recent surveys have been unsuccessful in relocating the species in the vicinity of Marina del Rey or El Segundo. The Hyperion area, which formerly contained relatively large expanses of coastal strand and wetland habitats, has been extensively developed.

In Orange County, the development of the Spyglass Hill area began in 1972. This development resulted in the destruction of the formerly occupied habitat at that site.

Although portions of the San Onofre area and the Santa Margarita River mouth in San Diego County remain relatively undisturbed, recent survey and small mammal trapping efforts at these locations failed to detect the presence of the Pacific pocket mouse (P. Brylski, pers. comm., 1993; R. Erickson, *in litt.*, 1993; Erickson 1993; R. Zembal, U.S. Fish and Wildlife Service, pers. comm., 1993). During the 1930s, Camp Pendleton Marine Corps Base did not exist and the city of Oceanside was immediately adjacent to the Santa Margarita River estuary. Much of the southern half of the Santa Margarita River estuary was destroyed in the early 1940s during the establishment of Camp Pendleton Marine Corps Base and the related construction of a boat basin and harbor facilities. In addition, the Oceanside area has been extensively developed since the Pacific pocket mouse was last recorded there in 1931, and little, if any, suitable habitat remains at that location.

Although the lower Tijuana River Valley evidently supported a relatively large population of the Pacific pocket mouse in the early 1930s, this area has been substantially altered and currently provides little, if any, suitable habitat. Recent trapping efforts have failed to detect the Pacific pocket mouse at this location (Taylor and Tiszler 1991; R.T. Miller, pers. comm. to Erickson, 1993).

Another potential site for the Pacific pocket mouse is Lux Canyon in Encinitas, San Diego County, where an unverified sighting occurred in 1989. However, the majority of Lux Canyon has already been converted to urban development and agriculture. The remaining habitat in Lux Canyon is highly fragmented and subject to additional urban development (F. Roberts, U.S. Fish and Wildlife Service, pers. comm., 1993).

Opportunities to find additional populations of the Pacific pocket mouse are limited. Less than 400 hectares (1,000 acres) of about 28,000 hectares (70,000 acres) (1 percent) encompassing the range of the Pacific pocket mouse in Los Angeles County are undeveloped (U.S. Fish and Wildlife Service, unpublished data, 1993). About 17,600 hectares (44,000 acres) of approximately 21,600 hectares (54,000 acres) (81 percent) encompassing the range of the Pacific pocket mouse in Orange County has been converted to urban uses (U.S. Fish and Wildlife Service, unpublished data, 1993). Land use patterns in coastal San Diego County are similar. Oberbauer and Vanderwier (1991) reported that 72 percent of coastal sage scrub, 94 percent of native grasslands, 88 percent of coastal mixed chaparral, 88 percent of coastal salt marsh, 100 percent of coastal strand, and 92 percent of maritime sage scrub habitats in San Diego County had been converted to urban and agricultural uses by 1988.

An additional 16 hectares (41 acres) of suitable habitat for the Pacific pocket mouse occurs on the Dana Point Headlands. However, 13 hectares (32 acres) of this habitat would be eliminated by the same project that threatens the only known occupied habitat (EDAW 1993b). Additional potential habitat occurs on Pelican Hill in the San Joaquin Hills and along the coastal bluffs in Crystal Cove State Park. Over 50 percent of the Pelican Hill site was graded in March 1993 with the remainder approved for development (F. Roberts, pers. comm., 1993).

Within the remaining undeveloped range of the Pacific pocket mouse, areas that contain suitable habitat for the species represent less than 10 percent of the remaining habitat. This is exemplified by the situation in Orange County, where identified suitable habitat for the Pacific pocket mouse is restricted to less than 60 hectares (150 acres) (F. Roberts, pers. comm., 1993).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable.

C. *Disease or predation.* Disease is not known to be a factor affecting this species at this time.

The proliferation of non-native populations of the red fox (*Vulpes vulpes*) in coastal southern California is well documented (Lewis *et al.* 1993). Erickson (1993) has speculated that the red fox "may have hastened the demise of the Pacific pocket mouse in the El Segundo area," where the species apparently was well-represented historically.

Feral and domestic cats are known to be predators of native rodents (Hubbs 1951, George 1974). Pearson (1964) concluded that the removal of 4,200 mice from a 14 hectare (35 acre) test plot was accomplished largely by 6 cats over an 8-month period. Feral and/or domestic cats are threatening the only known population of the Pacific pocket mouse. A resident living immediately adjacent to the only known population has reported that domestic cats had recently and repeatedly brought home a number of "tiny gray mice" (P. Brylski, *in litt.*, 1993). Of all rodent captures at Dana Point Headlands reported by Brylski (1993), 81 percent were Pacific pocket mice.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that may provide some protection for the Pacific pocket mouse include: (1) The Federal Endangered Species Act (Act) in those cases where the pocket mouse occurs in habitat occupied by a listed species; (2) the California Natural Community Conservation Planning Program; (3) the California Environmental Quality Act; (4) land acquisition and management by Federal, State, or local agencies or by private groups and organizations; and (5) local laws and regulations.

The Pacific pocket mouse is currently classified as a candidate for Federal listing under the Act and as a Species of Special Concern "Of Highest Priority" by the California Department of Fish and Game (Department). However, Federal candidate species and Department Species of Special Concern have no local status and are afforded no protection under the Federal or California Endangered Species Acts.

The only known population of the Pacific pocket mouse is found in conjunction with a population of coastal California gnatcatchers on the Dana Point Headlands (Brylski 1993; EDAW 1993a,b). The coastal California gnatcatcher's status as a threatened species gives it protection under the Act. However, the legal authority to protect the gnatcatcher does not extend to candidate species.

Under provisions under section 10(a) of the Act, the Service may permit the incidental "take" of the gnatcatcher during the course of an otherwise legal activity as long as the likelihood of that species' survival and recovery in the wild is not precluded. If the Service authorized take of the gnatcatcher at the Dana Point Headlands pursuant to section 10(a), the permitted activities could result in the extinction of the Pacific pocket mouse.

In 1991, the State of California established the Natural Communities Conservation Planning Program to address the conservation needs of natural ecosystems throughout the State. The initial focus of that program is the coastal sage scrub community occupied, in part, by the Pacific pocket mouse. At the present time, no plans have been completed or implemented, and no protection is currently proposed to prevent or reduce impacts to 3.65 of the 3.75 acres of occupied habitat on the Dana Point Headlands that are proposed for development.

In many cases, land-use planning decisions are made on the basis of environmental review documents prepared in accordance with the California Environmental Quality Act (CEQA) or the National Environmental Policy Act. These Acts have not adequately protected Pacific pocket mouse habitat.

A relocation program proposed to mitigate impacts to the Pacific pocket mouse on the Dana Point Headlands (EDAW 1993b) has not been fully defined or developed and must be considered highly experimental. As part of this proposed mitigation program, "the Pacific pocket mouse will be relocated to suitable on-site or off-site locations that are or will be preserved as suitable habitat" (EDAW 1993b). EDAW (1993b) has concluded that the "implementation of this mitigation will not reduce impacts to this species to a level of insignificance." The program proposed in the Dana Point Headlands to control domestic cat predation is also inadequate.

E. *Other natural or man-made factors affecting its continued existence.* This species is highly susceptible to extinction as a result of stochastic environmental or demographic causes because the remaining animals are found in one location.

The Service has determined that listing as endangered is appropriate because the remaining location is imminently threatened by urban development.

Reasons for Emergency Determination

Under section 4(b)(7) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and 50 CFR 424.20, the Secretary may determine a species to be endangered or threatened by an

emergency rule that shall cease 240 days following publication in the **Federal Register**. The reasons why this rule is necessary are discussed below. If at any time after this rule has been published the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

Of the eight known sites historically occupied by the species, all but two have been developed or significantly altered through human activities. Suitable habitat remains in the Marina del Rey/El Segundo portion of Los Angeles County; however, efforts to find the animal in this area have not been successful. One other site at San Onofre in San Diego County still retains suitable habitat. However, the Pacific pocket mouse was never common at this site, and recent surveys have not located any individuals.

The only remaining population (containing no more than 39 animals) of the Pacific pocket mouse occurs on the Dana Point Headlands of Dana Point, California. As discussed under factors A, C, and D in the Summary of Factors Affecting the Species section above, an emergency posing a significant risk to the well-being and continued survival of the Pacific pocket mouse exists as the result of the imminent, proposed destruction of 3.65 of the 3.75 acres of occupied habitat (Brylski 1993; EDAW 1993a,b). The Pacific pocket mouse is also imminently threatened at this location by feral and/or domestic cat depredation.

For these reasons, the Service finds that the Pacific pocket mouse is in imminent danger of extinction throughout all or a significant portion of its range and warrants immediate protection under the Act.

Critical Habitat

Critical habitat, as defined by section 3(5)(A) of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent at this time for the Pacific pocket mouse. The only known population of this species is found on private lands where Federal jurisdiction or involvement in land-use activities is not expected. Therefore, the designation of critical habitat within the existing range of the Pacific pocket mouse would not appreciably benefit the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition, cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service does not expect to receive requests for consultation from other Federal agencies with respect to this species because no Federal involvement is expected for activities occurring within habitat currently occupied by the Pacific pocket mouse.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations on listed wildlife and inquiries regarding same should be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 48244).

References Cited

A complete list of references cited herein is available upon request from the U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary authors of this emergency rule are Loren R. Hays and Fred M. Roberts, Jr., U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, effective from January 31, 1994 until September 28, 1994, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*		
Mouse, Pacific pocket.	*Perognathus longimembris pacificus.*	U.S.A. (CA)	Entire	E	526	NA	NA
*	*	*	*	*	*		

Dated: January 28, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–2463 Filed 1–31–94; 3:57 pm]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC39

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Pacific Pocket Mouse as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to make the provisions of the emergency rule listing the Pacific pocket mouse (*Perognathus longimembris pacificus*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act), permanent. Although a minimum of 8 populations of the Pacific pocket mouse encompassing 29 sites from Los Angeles County south to San Diego County formerly occurred, the only known extant population occurs on the Dana Point Headlands in Orange County, California. Depredation by feral and/or domestic cats and a proposed development threaten the continued existence of the remaining population. Additional data and information, which may assist the Service in making a final decision on this proposed action, is solicited on the status of this species.

DATES: Comments from all interested parties must be received by April 4, 1994. The Service intends to hold a public hearing on this proposal and will soon announce the date, time, and location in the **Federal Register**.

ADDRESSES: Comments and materials concerning this proposal should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection by appointment during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, Field Supervisor, Carlsbad Field Office, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

For a thorough discussion of biological information, previous Federal action, a summary of the factors affecting the species, the reasons why critical habitat is not being proposed, and conservation measures available to listed and proposed species, consult the emergency rule on the Pacific pocket mouse published in this same **Federal Register** separate part.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act requires that a public hearing be held if requested within 45 days of the date of publication of a proposed rule. As indicated under the DATES section of this proposed rule, the Service intends to hold a public hearing on this proposal and will soon announce the date, time, and location in the **Federal Register**.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Author

The primary author of this proposed rule is Loren R. Hays of the Carlsbad Field Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for "Mouse, Pacific pocket" under "MAMMALS," in the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*	*	*
Mouse, Pacific pocket	*Perognathus longimembris pacificus.*	U.S.A. (CA)	Entire	E	526, ___	NA	NA
*	*	*	*	*	*	*	*

Dated: January 28, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–2464 Filed 1–31–94; 8:45 am]

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Federal Register

Vol. 59, No. 23

Thursday, February 3, 1994

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103d Congress, 2d Session, 1994

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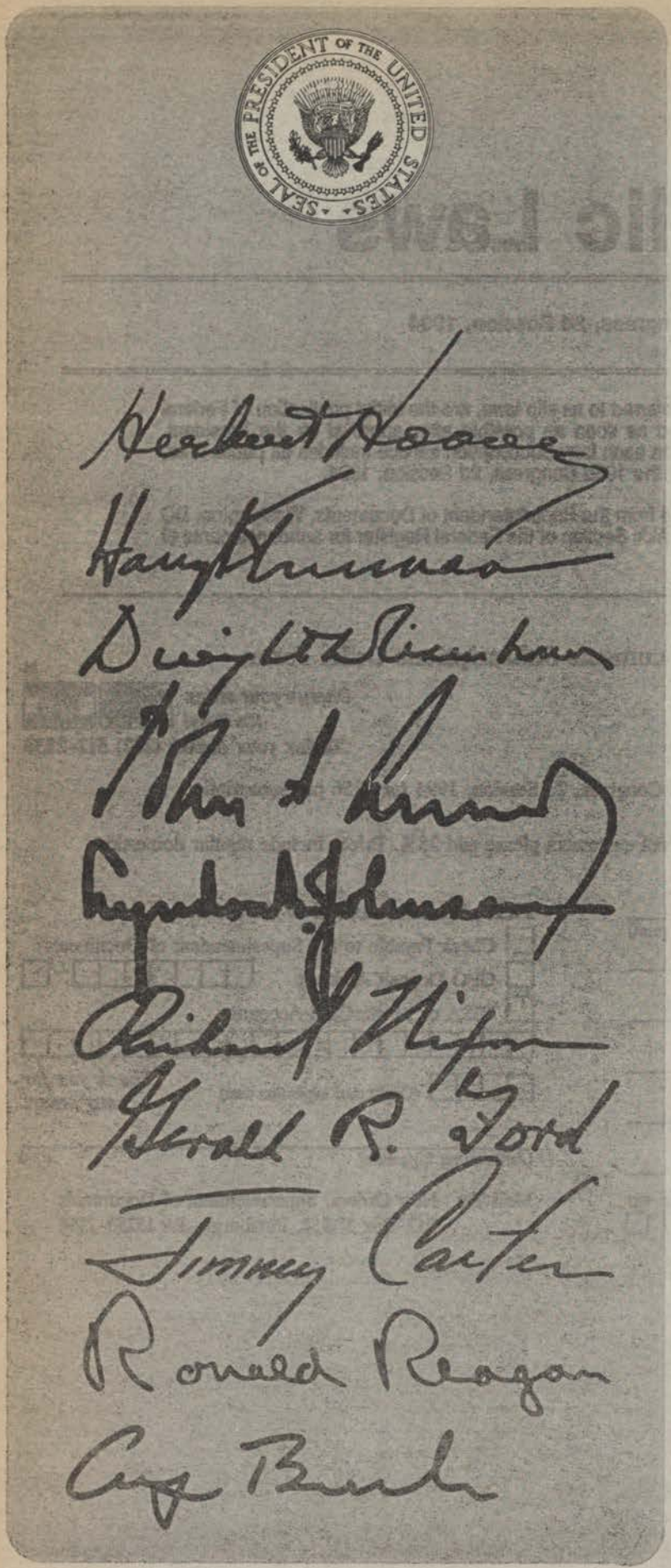

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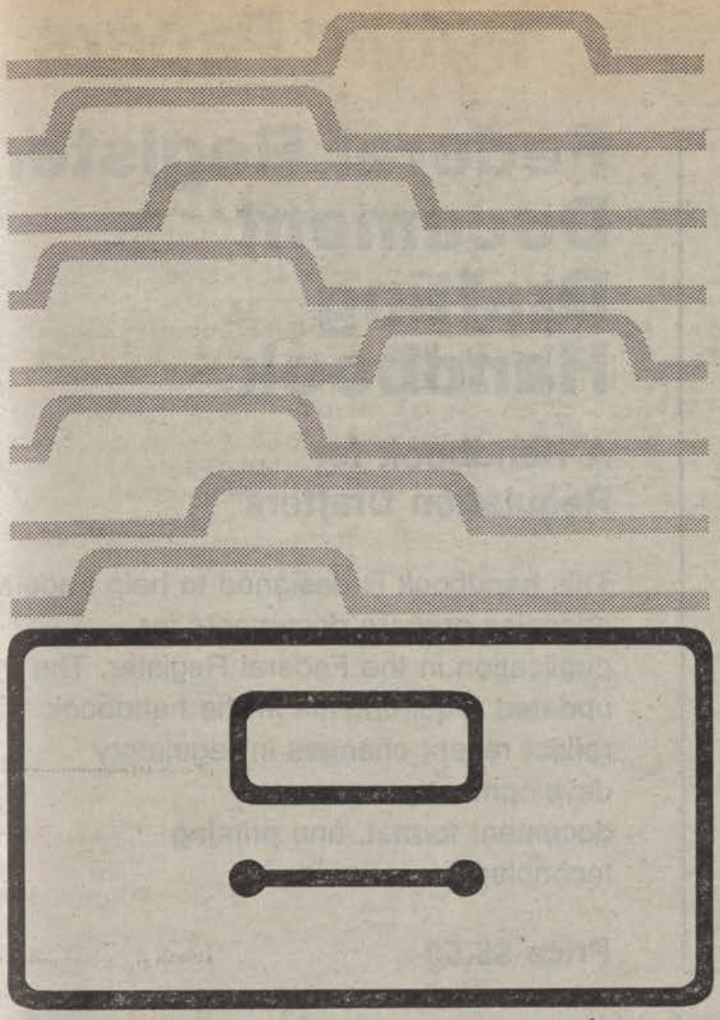

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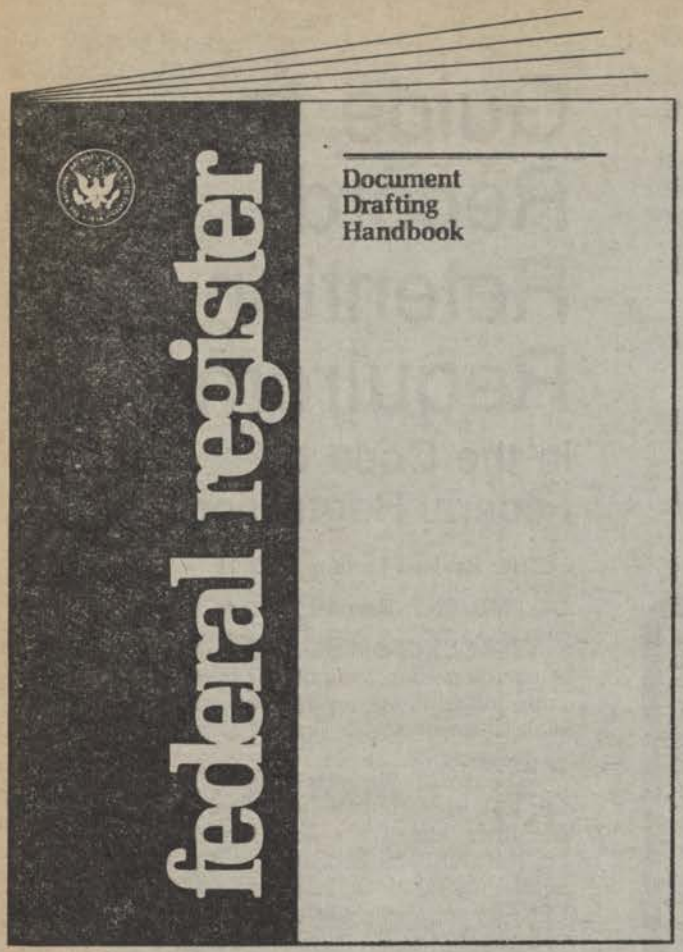

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